

# City of Fairmont Planning and Zoning Code

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# How to Use This Ordinance

## 1. CONTENT ORGANIZATION AND PAGE LAYOUT

The Zoning Ordinance is organized into eight Articles, which are further divided using standard outline hierarchy. The content and page layout are designed to promote a clear understanding of requirements, as well as quick retrieval of relevant standards, procedures and other information. The following key assists with navigating through this document.

**Article Tabs** link to the first page of each Article. Red tab indicates the Article in which the current page is located.

**User Notes** provide helpful information for digital and hard copy formats. User Notes are always highlighted in blue.

**Sections and Subsections** contain the Ordinance regulations in a hierarchical manner.

**Blue bold font** links to standards in other sections of the Ordinance.

**Graphics, figures, and tables** illustrate concepts or clarify regulations.

The diagram illustrates the content organization and page layout of the City of Fairmont Zoning Code, specifically focusing on the NMU Neighborhood Mixed Use district. It shows a central page layout with various sections and links to other parts of the ordinance.

**Article Tabs (Left Side):** A vertical column of tabs numbered 1 through 8, representing different articles of the ordinance. Tab 1 is highlighted in red, indicating the current page.

**Section 3.1.3 NMU Neighborhood Mixed Use:** The main section being highlighted, showing its structure and content.

**Subsections:**

- A. INTENT:** The Neighborhood Mixed Use district is coded to provide pedestrian-scaled higher density residential homes and opportunities for limited scale commercial activities in existing mixed use areas and at the functional center of new neighborhoods. The architectural guidelines detailed in Section 5.2 are enumerated to permit the construction of various building types in close proximity to each other. In order to preserve the architectural heritage of the City of Fairmont, existing residential structures proposed for mixed use in these areas shall be preserved and adapted for re-use in lieu of new construction.
- B. USES PERMITTED BY RIGHT:**
  - i. Residential
    - 1. Single-Family Residence
    - 2. Duplex
    - 3. Group Residential Facility
    - 4. Group Residential Home
  - ii. Commercial, office, retail, or service use, not to exceed 2,500 sq ft in areas § 4.3.1.
- C. USES PERMITTED WITH CONDITIONS:** The following uses must demonstrate they meet all of the requirement in Section 4.1.
  - i. Essential Service, Class 1 & 2
  - ii. Home Occupation
  - iii. Bed and Breakfast Inn
  - iv. Child Care Home
  - v. Townhome
  - vi. Mixed-Use Buildings and Live-Work Units
  - vii. Cemetery
  - viii. Civic Use
  - ix. Garage Sale
  - x. Portable Storage Container
  - xi. Temporary Use
  - xii. Existing Commercial Office, Retail, or Service Use, exceeding 2,500 sq ft
- D. CONDITIONAL USES:** The following uses must demonstrate they meet all of the requirement in Section 4.1.
  - i. Automotive Sales
  - ii. Multi-Family Residence
  - iii. Child Care Facility
  - iv. Convenience Store, excluding fueling stations
  - v. Institutional Use
  - vi. New Commercial Office, Retail, or Service use, not exceeding 5,000 sq ft
  - vii. Recreational Facility
  - viii. Restaurant and Restaurant/Lounge
- E. EXCLUSIONS:**
  - i. Adult establishment
  - ii. Automotive / Boat / Heavy Equipment / Manufactured Home Repair, Sales & Service, including filling stations
  - iii. Barn/Nightclub
  - iv. Drive-Through Facility
  - v. Gambling Facility
  - vi. Light and Heavy Manufacturing Use
  - vii. Limited Video Lottery
  - viii. Highway Commercial Use (unless otherwise permitted herein)
  - ix. Mining or Landfill Operation
  - x. Mini-Storage
  - xi. Outdoor Kennel
  - xii. Outdoor storage or sales
  - xiii. Warehousing and/or Storage necessitating truck travel (not including servicing of establishments located within the district).
  - xiv. Uses which are not specifically enumerated or contraindicated by the Planning Director to be compatible with this District.
  - xv. Parking Lot, except as an accessory use to a permitted or conditional use.

**Development Standards (F. DEVELOPMENT STANDARDS):**

- Minimum Frontage Build-Out:** 60%+
- Setbacks:**
  - Frontal Structure Setbacks: Minimum front yard setback: 10 ft; Maximum front yard setback: 25 ft; Minimum rear yard setback: 40 ft; Minimum side yard setback: 5 ft.
  - Accessory Structure: Minimum rear yard setback: 5 ft; Minimum side yard setback: 5 ft.
- Building Height:**
  - Principal Structure: Maximum structure height: 40 ft or three stories.
  - Accessory Structure: Maximum structure height: 15 ft or one story.

**Graphics and Diagrams:**

- Diagram 1:** A site plan showing a building footprint, setbacks, and frontage build-out requirements. It includes labels for "Buildable Area", "60% min frontage build-out", "10' Min", "5' Min", and "R/W" (Right of Way).
- Diagram 2:** A cross-section diagram showing building height limits. It includes labels for "40 ft or 3 stories", "40 ft or 3 stories", "40 ft or 3 stories", and "40 ft or 3 stories".

**Selected References:**

- 4. Use Standards:**
  - Uses Not Expressly Permitted or Conditional
  - Use and Parking of Recreational & Commercial Vehicles
  - Neighborhood Development Standards
  - Housekeeping Unit
  - Temporary Uses
- 5. Site Standards:**
  - Lot Standards
  - Easements
  - Lighting Requirements
  - Architectural Standards
  - Signs
  - Parking and Loading Requirements
  - Landscape Requirements
  - Fencing in Vegetative Screening
- 6. Accessory Buildings and Structures:**
  - Accessory Buildings and Structures
  - Refuse Containment and Mechanical Equipment
  - Required Yard Use by Another Building
- 7. Development Procedures:**
  - Site Plan Review
- 8. Subdivision Regulations:**

**Page Layout and Navigation:**








- Page 3-8:** The left page of the ordinance, showing the "City of Fairmont Zoning Code clearzoning®" logo and navigation icons.
- Page 3-9:** The right page of the ordinance, showing the "City of Fairmont Zoning Code clearzoning®" logo and navigation icons.



# How to Use This Ordinance

## 2. SYMBOLS AND USER NOTES

The following symbols are used throughout the Zoning Ordinance:

-  indicates the term is defined in Article 2, Definitions. (Note: Not every defined term is designated with a  symbol. Consult Article 2, Definitions, for a list of all defined terms.)
-  indicates there is a graphic that illustrates the standard or requirement.
-  identifies a property line.
-  identifies the right-of-way centerline.
- R/W* identifies the right-of-way.
-  identifies a **User Note** that provides helpful information for all users.
-  identifies a **Digital User Note** that provides helpful information for users with a digital version of the Zoning Ordinance.



# How to Use This Ordinance

## 3. READING THE ORDINANCE

Rules have been established to assist with interpreting the ordinance. Below are some rules to keep in mind when reading this document:

- ☑ Sometimes there may be general and specific regulations that pertain to one particular aspect of site design. In such instances, the specific regulations must be followed.
- ☑ Discrepancies between text and an illustration (including its caption) may occur. In the case of such discrepancies, the text is considered the accurate source of information.
- ☑ The use of the word shall carries significant meaning. Shall regulations must be followed. Requirements that use the word may are discretionary, meaning that the requirement is at the discretion of the Planning Commission or Board of Zoning Appeals.
- ☑ Article 2, Definitions, contains over 80 terms. If a term is not listed in this section, it will carry the meaning customarily assigned to it.
- ☑ Conjunctions are often used and must be read accurately:
  - AND indicates that all connected items, conditions, provisions or events shall apply.
  - OR indicates that the connected items, conditions, provisions or events may apply singly or in any combination. (OR may also be read “and/or”)
  - EITHER ... OR indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.

For more rules, see [Section 2.1 Construction of Language](#).



### Digital User Note:

#### What is a link?

A link allows for quick reference to a relevant section. By ‘clicking’ a link, the user is taken directly to a page in the Ordinance or another reference document. The user may return to the original page by clicking the ‘previous view’ button in Adobe Acrobat Reader.



If you do not see the ‘previous view’ button on your Adobe Acrobat Reader screen, you can add it by turning on your ‘page navigation toolbar’. For assistance, refer to the ‘Help’ menu in your version of Acrobat Reader.

#### What information is linked?

All **blue text** is linked to either another page within the Zoning Ordinance, a separate City ordinance or document, or an external website.

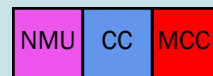
In addition, several other features of the document are linked to allow users to navigate through the ordinance. Click on any of the following features to quickly locate another section:



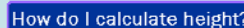
**Article tabs** located on the side of each page are linked to the Contents page of each Article.



**Icons** located at the bottom of each page are linked to the ‘How to Use This Ordinance’ section, the main Table of Contents, and the Zoning Map



**Use Matrix district headings** are linked to the corresponding district regulations page in Article 3.



**‘How do I calculate height’ button** located on each district regulations page is linked to the definition of building height in Article 2.



**Zoning Map Legend headings** are linked to the corresponding district regulations page in Article 3.



# How to Use This Ordinance

## 4. USE MATRIX

Below is a reference table that summarizes the uses listed in the Ordinance. Uses below are generalized. Consult [Section 3.1](#) as certain conditions and standards may apply. If there are any conflicts between this table and the uses listed in Section 3.1, the latter will control.

P = Principal by Right

PC = Permitted with Conditions

C = Conditional Use



### Digital User Note:

Click on a district heading below to go directly to the corresponding district regulations.

	GR	NR	NMU	CC	MCC	HC	I	MHN	MHP	T	EDU
Accessory Structures											P
Adult Entertainment							C				
Animal grooming and boarding							PC				
Art Galleries		C									
Automobile Fueling Stations					C						
Automotive Repair					C						
Automotive Sales			C		C	C					
Automotive Service					C	C					
Barbar Shops											
Bars and Nightclubs				C		C					
Beauty Shops											
Bed & Breakfast Inns		PC	PC	PC	PC						
Boat Sales and Service						C					
Bus Shelters					PC						
Cemetery	C	PC	PC		C						
Child Care Center				PC	PC	PC	PC				
Child Care Facility			C	PC	PC	PC	PC				
Child Care Home		PC	PC		PC	PC	PC				
Churches and other places of worship	C	C									
Civic Uses		C	PC	C		C					
Commercial, Office, Retail or Service uses, 15,000 sq ft to 30,000 sq ft					C						
Commercial, Office, Retail or Service uses, exceeding 30,000 sq ft				C		C					
Commercial, Office, Retail or Service uses, exceeding 2,500 sq ft			PC								
Commercial, Office, Retail or Service uses, not to exceed 15,000 sq ft					P						
Commercial, Office, Retail or Service uses, not to exceed 2,500 sq ft			P								
Commercial, Office, Retail or Service uses, not to exceed 2,500 sq ft											
Commercial, Office, Retail or Service uses, not to exceed 30,000 sq ft				P		P	P				
Commercial, Office, Retail or Service uses, not to exceed 5,000 sq ft			C								

Continued on next page



# How to Use This Ordinance

## 4. USE MATRIX (Continued)

Below is a reference table that summarizes the uses listed in the Ordinance. Uses below are generalized. Consult [Section 3.1](#) as certain conditions and standards may apply. If there are any conflicts between this table and the uses listed in Section 3.1, the latter will control.

P = Principal by Right

PC = Permitted with Conditions

C = Conditional Use



### Digital User Note:

Click on a district heading below to go directly to the corresponding district regulations.

	GR	NR	NMU	CC	MCC	HC	I	MHN	MHP	T	EDU
Convenience Store			C	C	C						
Country Clubs		C			C						
Data Processing and other corporate related functions										P	
Daycares/Preschools											
Distribution							P				
Drive-through Facilities				C	PC	PC					
Dry Cleaning Establishments											
Duplexes (Two-Family Homes)		PC	P	P	P		P	PC			
Entertainment Uses				C	C						
Essential Services, Class 1 & 2	PC	PC	PC			P	P	P	PC		
Essential Services, Class 3											
Garage Sales	PC	PC	PC						PC		
Group Residential Facilities	P	P	P	P	P	P	P				
Group Residential Homes	P	P	P	P	P	P	P	P			
Heavy Equipment Sales and Service						C					
Home Occupations		PC	PC	PC	P	P	P				
Home Occupations, Minor								PC	PC		
Hotel				C	C	P	P			C	
Inns					C						
Institutional Uses			C	C	C		C				
Kennels, Outdoor							C				
Libraries		C									
Light Manufacturing				C							
Limited Video Lottery				C		C	C				
Live-Work Units			PC	P	P	P	P				
Mobile Home Parks									C		
Manufactured Home Sales and Service						C					
Manufactured Homes								P	P		
Manufacturing, Heavy							C				
Manufacturing, Light							P				
Manufacturing and Processing, Limited										P	
Minor Home Occupation	PC										
Mixed Use Buildings			PC	P	P	P	P				

Continued on next page



# How to Use This Ordinance

## 4. USE MATRIX (Continued)

Below is a reference table that summarizes the uses listed in the Ordinance. Uses below are generalized. Consult [Section 3.1](#) as certain conditions and standards may apply. If there are any conflicts between this table and the uses listed in Section 3.1, the latter will control.

P = Principal by Right

PC = Permitted with Conditions

C = Conditional Use



### Digital User Note:

Click on a district heading below to go directly to the corresponding district regulations.

	GR	NR	NMU	CC	MCC	HC	I	MHN	MHP	T	EDU
Mobile Vending (Vehicle, Street, Sidewalk)				PC	PC	PC					
Mobile Homes									P		
Motels					C						
Multi-Family Residences		C	C	P	P		P				
Museums		C									
Offices										P	
Outdoor Storage							C				
Outdoor Storage, as an accessory use						C	PC				
Parking Decks											
Portable Storage Containers	PC	PC	PC	PC	PC	PC	PC		PC		
Recreational Facilities	C	PC	C	C	C			C			
Recycling, Indoor							C				
Research and Development										P	
Restaurant Lounges			C	PC	PC	PC	PC			C	
Restaurants			P	P	P	P	P				
Schools	C	C									P
Schools, Colleges and Universities											P
Single Family Residence	P	P	P	P	P		P	P			
Storage, Mini							P				
Telecommunication Facilities						C	C				
Temporary Uses			PC	PC	PC	PC	PC				
Townhomes		C	PC	P	P		P				
Transportation Services							PC				
Warehousing						C	P				
Wholesaling										P	
Wholesaling, not to exceed 30,000 sq ft						P					



# How to Use This Ordinance

## 5. DISTRICT SUMMARY TABLE

Below is a quick reference table that summarizes district regulations. Consult [Article 3 Zoning Districts](#) for additional requirements and exceptions to the information below.

District Summary Table					
District	Minimum Lot Size	Minimum Frontage Build-out (percent)	Setbacks		
			Front Yard (feet)	Side Yards (feet)	Rear Yard (feet)
GR General Residential	6,000 sq ft	None Specified	RBL or 20	8	25
NR Neighborhood Residential	6,000 sq ft	None Specified	10	8	25
NMU Neighborhood Mixed Use	6,000 sq ft	60	10	5	40
CC City Center	See 7.5.6.A.ii	75	0	0	15
MCC Main Corridor Commercial	See 7.5.6.A.ii	60	0	5	8
HC Highway Commercial	See 7.5.6.A.ii	None Specified	25	0	48
I Industrial	See 7.5.6.A.ii	None Specified	20	20	20
MHN Manufacture Home Neighborhood	See 7.5.6.A.ii	None Specified	RBL or 20	8	25
MHP Mobile Home Park	3000 sq ft	None Specified	20	20	20
T Technology	See 7.5.6.A.ii	None Specified	50	20	20
EDU Education	See 7.5.6.A.ii	None Specified	0	0	0



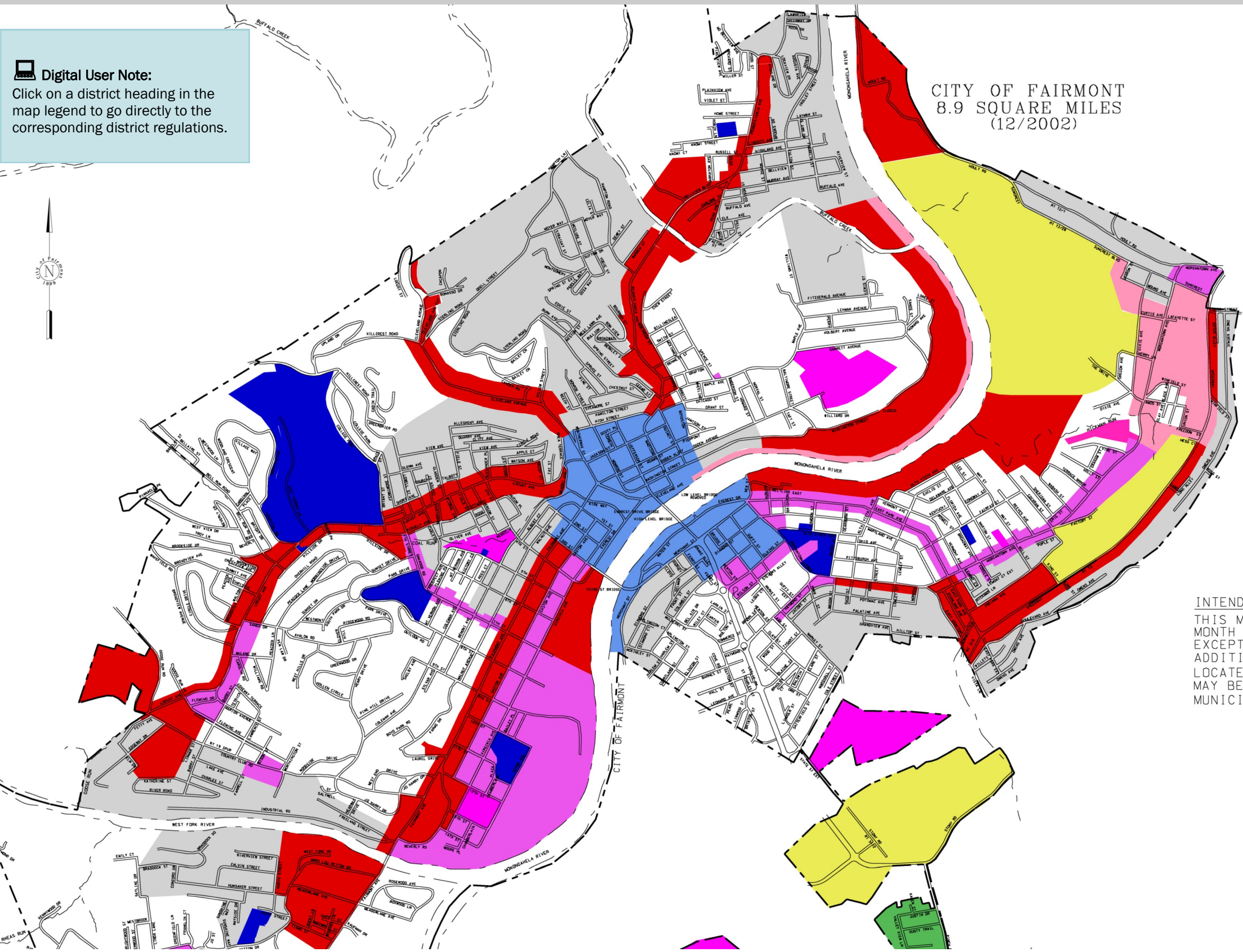
# How to Use This Ordinance

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# Zoning Map - Section A



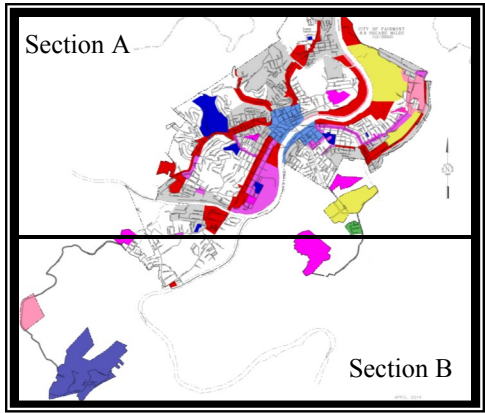
CITY OF FAIRMONT  
8.9 SQUARE MILES  
(12/2002)

**Digital User Note:**  
Click on a district heading in the  
map legend to go directly to the  
corresponding district regulations.

- DISTRICTS**
- General Residential
  - Neighborhood Residential
  - Neighborhood Mixed Use
  - Main Corridor Commercial
  - City Center
  - Highway Commercial
  - Industrial
- SPECIAL USE DISTRICTS**
- Mobile Home Park
  - Educational
  - Technology
  - Factory Built Home Neighborhood
- OVERLAY DISTRICTS**
- Recreation


APRIL 2014

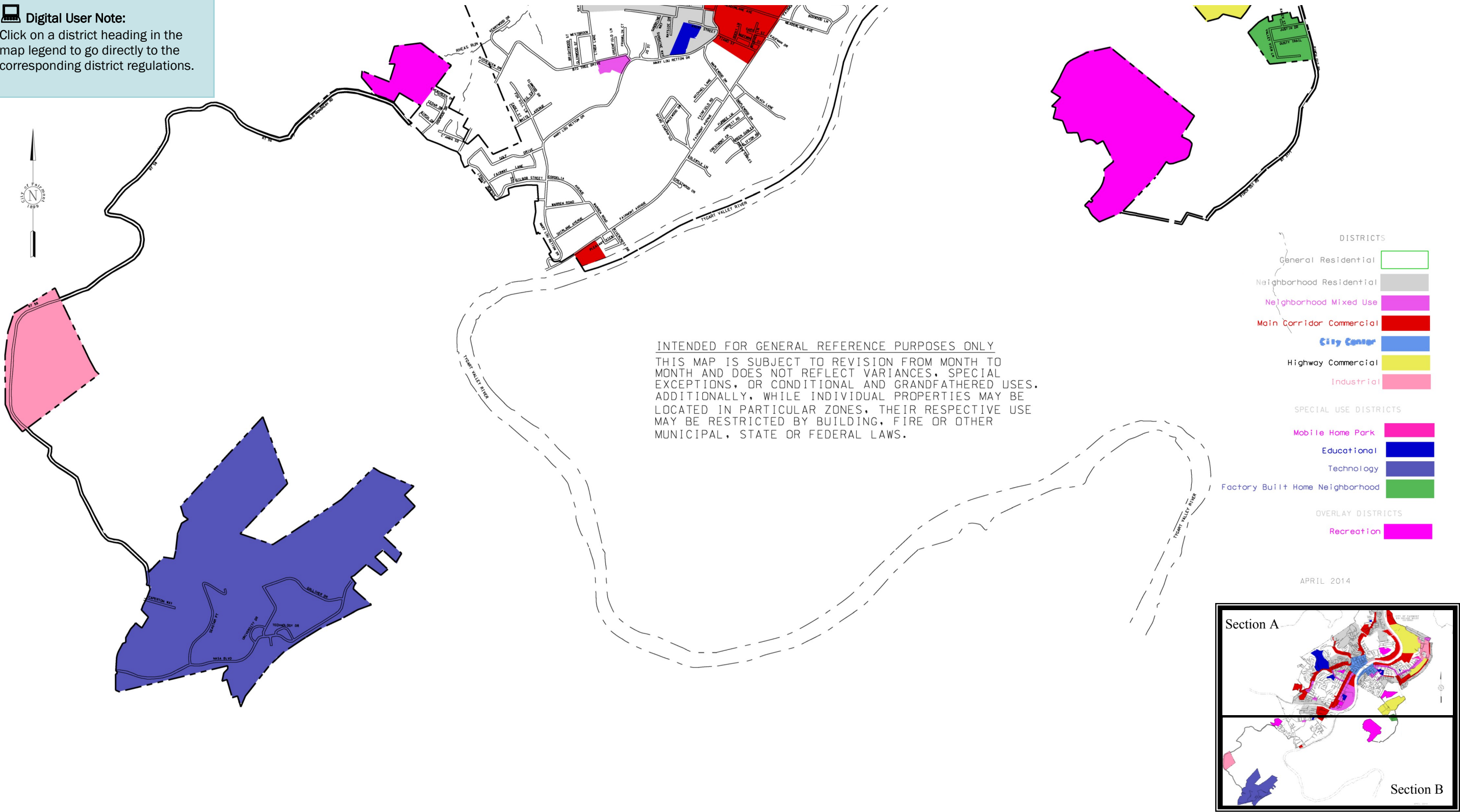
INTENDED FOR GENERAL REFERENCE PURPOSES ONLY  
THIS MAP IS SUBJECT TO REVISION FROM MONTH TO  
MONTH AND DOES NOT REFLECT VARIANCES, SPECIAL  
EXCEPTIONS, OR CONDITIONAL AND GRANDFATHERED USES.  
ADDITIONALLY, WHILE INDIVIDUAL PROPERTIES MAY BE  
LOCATED IN PARTICULAR ZONES, THEIR RESPECTIVE USE  
MAY BE RESTRICTED BY BUILDING, FIRE OR OTHER  
MUNICIPAL, STATE OR FEDERAL LAWS.





# Zoning Map - Section B

 **Digital User Note:**  
Click on a district heading in the map legend to go directly to the corresponding district regulations.





# Article 1.0

## *Purpose and Introduction*



Article 1.0	Purpose and Introduction
1.1	Intent
1.2	Territorial Limits of Relations/ Applicability
1.3	Annexed Territory
1.4	Guiding Principles
1.5	Relationship to Other Ordinances
1.6	Severability



# 1.0 Purpose and Introduction

## 1.1 INTENT

The provisions of this Zoning Ordinance shall be held to establish the minimum requirements adopted for purposes of :

1. Promoting the general public welfare, health, safety, comfort, and morals;
2. Providing for a plan so that adequate light, air, convenience of access, and safety from fire, flood and other danger is secured.
3. Ensuring attractiveness and convenience;
4. Lessening congestion;
5. Preserving historic landmarks, sites, districts and buildings in conjunction with the City of Fairmont Historic Landmarks Commission and the Historic Preservation Review Commission;
6. Regulating the use of land and designating specific land uses;
7. Authorizing flexible planning standards to create, redevelop, reuse, protect, and enhance the physical qualities of the community;
8. Designating historic districts and regulating the uses of land design goals and regulating the uses of land within the corridor overlay districts;
9. Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;
10. Establishing design standards and site plan approval procedures;
11. Dividing the land within the corporate limits of the City of Fairmont into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired, or any combination of both;
12. Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;
13. Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory built homes;
14. Authorizing a process and standards for factory built homes: provided, that the process and standards for regulating factory built homes is no more restrictive than the process and standards for site built homes.

15. Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;

16. Regulating traffic flow and access, pedestrian flow and access, parking and loading;

17. Identifying flood prone areas subject to periodic flooding, and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazard of persons and damage to property resulting from the accumulation of storm or flood waters; and

18. Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for such developments.

## 1.2 TERRITORIAL LIMITS OF REGULATIONS/ APPLICABILITY

The rules, regulations, and requirements of this Zoning Ordinance shall be applicable within all territory or area that lies within the corporate limits of the City of Fairmont or hereafter annexed into same.

## 1.3 ANNEXED TERRITORY

Upon annexation of additional territory into the corporate limits of the City of Fairmont such annexed territory upon entry of the order of annexation shall be subject to the rules, regulations and requirements of this Zoning Ordinance and shall be subject to site review by the Planning Commission prior to any person undertaking development or re-development thereof until such time as zoning of same shall be undertaken by the governing body based upon a land use study prepared by the City Planner and upon the advice of the Planning Commission.

## 1.4 GUIDING PRINCIPLES

Existing patterns of urban development have seriously compromised sustainable growth, the quality of life, and economic viability of cities. The practices of land use segregation and auto dependent design criteria have resulted in widespread loss of open space and forest cover; increased traffic congestion and air pollution; environmental degradation with increased water runoff, soil erosion, and water supply contamination; increased housing and

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infrastructure costs; inadequate provision of schools and public services; and growing areas of declining property values, crime, and poverty. The resultant loss of community identity adds to these problems by discouraging citizen awareness of, and participation in, community affairs. Under this model, a majority of a municipality's time and money is spent replacing and extending infrastructure and mitigating the negative impacts of development. Assessed on a project-by-project basis the total effects and subsequent costs are hidden by immediate tax base increases and owner profits. However, if assessed at the community level, long term, all additional development of the model described above becomes a burden on a community. Low-density development increases the cost of living in order to finance, maintain, and replace infrastructure. Eventually, the increased cost of building and living in such areas prevents growth from continuing. This occurs long before an area reaches full economic potential and physical build out. A development model which addresses these problems must treat a community as a highly complex entity, not merely as a collection of individual market segments or an opportunity for real estate speculation.

The most basic viable unit of our complex economic region is the neighborhood. Neighborhoods provide the daily essential needs of all its residents in an area that is easily definable and pedestrian friendly. Neighborhoods interconnect to form town centers. Traditionally, commercial development respected this neighborhood scale, and therefore integrated itself into the fabric of the neighborhood through appropriate building design and its center. This Code represents the return to traditional and sustainable planning. It differs from conventional planning because it focuses on physical change of the urban environment through the traditional design elements of town making; public space, infrastructure, buildings, and parks. It combines these elements to construct places beyond the autonomy of the individual project, interest, or property.

1. The City.
  - A. The City of Fairmont is a finite place with specifically designated geographic boundaries. The City is comprised of multiple community centers, some with their own identifiable center and edges derived from topography and rivers or streams. These community centers should form a fundamental economic unit of the contemporary world. Governmental cooperation, public policy, physical planning, and economic strategies must

foster and promote the development and redevelopment of these identifiable community centers.

- B. The City also has a necessary and fragile relationship with the outlying rural unincorporated areas of Marion County and the natural landscape. This relationship is environmental, economic, and cultural. Farmland and nature are as important to the City as the garden is to the house.
- C. Development and re-development patterns should not blur or eradicate the edges of the City. Infill development, re-development, reuse and preservation of green spaces within the City all conserve environmental resources, economic investment, and social fabric, while reclaiming, redeveloping and revitalizing marginal and abandoned areas. The City should develop strategies to encourage such infill development, re-development, reuse and preservation over peripheral expansion.
- D. Where appropriate, new development with the City should be organized as neighborhoods and districts, and be integrated with the existing urban pattern. Development and redevelopment should respect historical patterns, precedents, and boundaries.
- E. The City should bring into proximity a broad spectrum of public and private uses to support an economy that benefits people of all incomes. Affordable housing should be distributed throughout the City to match job opportunities and to avoid concentrations of poverty.
- F. The physical organization of the City should be supported by a framework of transportation alternatives. Transit, pedestrian, and bicycle systems should maximize access and mobility throughout the City while reducing dependence upon the automobile.
- G. Revenues and resources should be used to promote rational coordination of transportation, recreation, public services, housing, and community institutions throughout the City.

2. The Neighborhood, the District, and the Corridor.
  - A. The neighborhood, the district, and the corridor are the essential elements of development and redevelopment in the City. They form identifiable areas that encourage citizens to take responsibility for their maintenance and evolution.
  - B. Neighborhoods should be compact, pedestrian-friendly, and mixed-use. Districts generally emphasize a special single use, and should follow the principles of neighborhood design when possible. Corridors are regional connectors of neighborhoods and districts; they range from boulevards and rail lines to rivers and parkways.
  - C. Many activities of daily living should occur within walking distance, allowing independence to those who do not drive especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy.
  - D. Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.
  - E. Transit corridors, when properly planned and coordinated, can help organize municipal structure and revitalize the municipality's community centers. In contrast, highway corridors should not displace investment from the municipality's existing community centers.
  - F. Appropriate building densities and land uses should be within walking distance of transit stops, permitting public transit to become a viable alternative to the automobile.
  - G. Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools, when possible and economically feasible, should be sized and located to enable children to walk or bicycle to them.

- H. The economic health and harmonious evolution of neighborhoods, districts and corridors can be improved through graphic urban design codes that serve as predictable guides for change.
  - I. A range of parks, green spaces and community gardens, should be distributed within neighborhoods. When possible, open lands should be used to define and connect different neighborhoods and districts.
3. The Block, the Street, and the Building.
    - A. A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use.
    - B. Individual architectural projects should be seamlessly linked to their surroundings.
    - C. The revitalization of urban places depends on safety and security. The design of streets and buildings should reinforce safe environments, but not at the expense of accessibility and openness.
    - D. In the contemporary city, development must adequately accommodate automobiles. It should do so in ways that respect the pedestrian and the form of public space.
    - E. Streets and squares should be safe, comfortable, and interesting to the pedestrian. Properly configured, they encourage walking and enable neighbors to know each other and protect their communities.
    - F. Architecture and landscape design should grow from local climate, topography, history, and building practice.
    - G. Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. They deserve distinctive form because their role is different from that of other buildings and places that constitute the fabric of the city.
    - H. All buildings should provide their inhabitants with a clear sense of location, weather and time. Natural methods of heating and cooling can be more resource-efficient than mechanical systems.
    - I. Preservation and renewal of historic buildings, districts, and landscapes affirm the continuity and evolution of urban society.



To these ends, this Zoning Ordinance, districts, and the zoning map have been prepared with due consideration of future growth; the promotion of a coherent community scaled built environment, which respects local and regional architecture; the promotion of an integrated and balanced transportation system based on pedestrian, transit, and automobile use; the adequate provision of water and sewer infrastructure, schools, parks, and other public necessities; and for the preservation and enhancement of the natural environment through the protection and replenishment of trees and plantings and by further landscaping and supplemental plantings of the public realm.

Therefore, the purposes of this Zoning Ordinance include but are not limited to those that provide the minimum regulations necessary to facilitate safe and orderly growth; provide for the health, safety, and welfare of the community; ensure adequate light and air and to prevent the overcrowding of land; preserve and improve property values and to protect private and public investment; and aid in preserving ecological balance by contributing to air purification, oxygen regeneration, and energy conservation, while reducing noise, glare, and heat. In addition to these purposes, this Zoning Ordinance ensures that growth forms an integral part of a community of functional neighborhoods and existing community centers within the City of Fairmont. This type of planning increases collective security and community identity by promoting civic awareness and responsibility and enhancing the quality of life for the entire town to ensure the greatest possible economic and social benefits for all residents.

#### 1.5 RELATIONSHIP TO OTHER ORDINANCES

It is not intended that this ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, vested rights or building permits previously adopted or issued pursuant to law and currently effective.

#### 1.6 SEVERABILITY

If any Section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

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# *Article 2.0*

## *Definitions*





## Article 2.0 Definitions

### 2.1 Interpretation

### 2.2 Intent

Abandonment	Certificate of Appropriateness	Dwelling or Dwelling Unit
Accessory Building	Certificate of Occupancy (CO)	Easement
Accessory Structure	Certificate of Zoning Compliance	Eave
Accessory Use	Change of Use	Encroachments
Adjacent, Adjoining Lot or Land	Child Care Center	Entertainment Use
Adult Day Care	Child Care Facility	Entrance, Primary
Adult Entertainment*	Child Care Home	Essential Services
Agriculture	City	Evergreen
Alley	City Engineer	Existing Use
Alteration	Civic Use	Existing Lot
Amendment, Text	Clear-Cutting	Façade
Amendment, Zoning Map	Clear-Vision Area	Facilities
Apartment Building	Clinic, Medical or Dental	Factory Built Homes
Approved Development Plan	Collegiate Club, Fraternity or Sorority House	Family
Arcade	Comprehensive Plan	Family Car Home
Attached Home	Conditional Use	Farm
Awning	Condominium	FEMA (Federal Emergency Management Authority)
Bars and Night Clubs	Construction Documents	Fence
Basement	Contiguous	Final Approval
Base Flood Elevation	Convenience Store	Final Plat
Bedroom Unit	Council	Floor Area, Gross
Bed and Breakfast Inn	Country Club	Frontage
Berm	Cul-de-sac	Frontage Build-Out Line
Block	Deciduous	Garage Sales
Boarding Lodging and Rooming House	Density, Gross	Gazebo
Buffer	Density, Net	Gross Leasable Area
Buildable Area	Developer	Ground Cover
Building	Development	Group Residential Facility
Building Area	Development Review Committee	Group Residential Home
Building Footprint	District	Halfway House
Building Height	District, Overlay	Hardship
Building Mass	Drip Line	High Technology Industry
Building Permit	Drive-Through Window Facility	Hillside Development/ Subdivision
Building, Principal	Driveway	Historic Landmark
Building Setback Line	Dormitories	Historic Structure
Caliper	Duplex	
Carport		
Car Wash		

\*Multiple terms are defined in this ordinance.





Historical District  
 Home Occupation  
 Hospital  
 Hotel/Motel/Inn  
 Housekeeping Unit  
 Impound Facility  
 Industrial Uses and Development  
 Industrial, Heavy  
 Industrial, Light  
 Infill Development  
 Industrial Uses  
 Interstate Highway  
 Island Landscape  
 Junk  
 Junk Yard  
 Landfill  
 Landscaped Areas  
 Landscaping Plan  
 Live-Work Unit  
 Loading Space  
 Lot  
 Lot Types\*  
 Lot Lines\*  
 Low Impact Development (LID)  
 Main Arterial Road  
 Major Plat Revision  
 Major Subdivision  
 Manufactured Home Park  
 Manufactured Housing/  
     Manufactured Single Family Dwelling  
 Manufacturing, Heavy  
 Manufacturing, Light  
 Marina  
 Mass Transit  
 Mater Development Plan  
 Mechanical Equipment  
 Mini-Storage Facilities  
 Minor Boundary Adjustment  
 Minor Plat Revision  
 Minor Subdivision  
 Mixed Use  
 Mixed-Use Building  
 Mobile Home  
 Mobile Home Park  
 Mobile Vending\*

Modular Home  
 Motel  
 Motor Vehicle  
 Neighborhood Commercial Use  
 Nightclub  
 Nonconforming Lot  
 Nonconforming Structure of Building  
 Non-Conforming Uses  
 Non-Residential Development  
 Nuisance  
 Office Use  
 Official Map  
 Off-Street Parking  
 On-Site, Off-Site  
 One-Family Home  
 Open Decks and Patios  
 Open Space  
 Ordinance  
 Ornamental Tree, Shrub  
 Outdoor Kennel  
 Outdoor Sales/Display  
 Outdoor Storage  
 Out Parcel  
 Overlay District  
 Owner  
 Parapet  
 Parcel  
 Park  
 Park and Ride Facility  
 Parking Area or Parking Lot  
 Parking Space  
 Party Wall  
 Paved  
 Performance Guarantee  
 Permanent Open Space\*  
 Permitted Use  
 Person  
 Pervious Surface  
 Pier and Pier Facility  
 Plan  
 Planning Commission  
 Plat  
 Plat, Final  
 Plat, Preliminary  
 Platted Lot  
 Playground

Porch  
 Portable Storage Containers  
 Portico  
 Preferred Development  
 Preliminary Plat  
 Premises  
 Principal Building  
 Private Driveway  
 Private Street  
 Property  
 Public Hearing  
 Public Sites  
 Public Space  
 Public Street  
 Public Utilities  
 Recreation , Active  
 Recreation, Passive  
 Recreational Facilities  
 Recreational Vehicle  
 Recycling  
 Required Building Line (RBL)  
 Reservation  
 Residential Development  
 Restaurant  
 Restaurant/Lounge  
 Restaurant, Drive In  
 Restaurant, Fast Food  
 Retail Sales  
 Rezoning, Standard  
 Right-of-Way (R-O-W)  
 Roofline  
 Sales and Service, Automobile/  
     Boat/Heavy Equipment  
 Salvage  
 Salvage Yard  
 Satellite Dish Antenna  
 School  
 Senior Citizen Housing  
 Setback  
 Shrub  
 Sign\*  
 Single Family Residential  
 Site Plan  
 Site Survey

\*Multiple terms are defined in this ordinance.

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Specified Sexual Activates  
 Specified Anatomical Areas  
 Story  
 Story Above Grade  
 Street\*  
 Street Private  
 Street Tree  
 Structure  
 Subdivider  
 Subdivision or Partition  
 Subdivision Regulations or  
 “these Regulations”  
 Temporary Structures  
 Thoroughfare  
 Top of Bank  
 Townhouses  
 Tract  
 Transitional Yard  
 Tree, Canopy  
 Tree, Small  
 Two-Family Home  
 Unit of Government  
 Underpinning  
 Utility  
 Use  
 Uses Permitted with Conditions  
 Vested Property Rights  
 Vested Right  
 Warehouse or Distribution  
 Yard  
 Yard, Front  
 Yard, Rear  
 Yard, Required  
 Yard, Side  
 Zoning District  
 Zoning  
 Zoning Map  
 Zoning Ordinance or this  
 Ordinance

\*Multiple terms are defined in this ordinance.

# 2.0 Definitions

## 2.1 INTERPRETATION

1. Words used in the present tense include the future tense.
2. Words used in the singular number include the plural, and words used in the plural number include the singular.
3. Any word denoting gender includes the female and the male.
4. The word "person" includes a firm, association, organization, limited liability company, limited partnership, corporation, trust, company, as well as a natural individual.
5. The word "lot" includes the word, "plot" or "parcel" or "tract".
6. The word "shall" and "must" are always mandatory and not merely directory.
7. The word "structure" shall include the word "building".
8. The word "Map" or "Zoning Map" or "Zoning Map, City of Fairmont, West Virginia" shall mean the Official Land Development Map of Fairmont, West Virginia.
9. The term "governing body" shall mean the City Council for the City of Fairmont, Marion County, West Virginia.
10. The term "Planning Commission" shall mean the Planning Commission for the City of Fairmont, Marion County, West Virginia.
11. The term "City Council" shall mean the City Council of the City of Fairmont, West Virginia.
12. The term "City Planner" shall mean the City Planner for the City of Fairmont, Marion County, West Virginia, or his/her designee.
13. The term "City Clerk" shall mean the City Clerk for the City of Fairmont, Marion County, West Virginia, or his/her designee.
14. The term "planning department" shall mean the Planning Department for the City of Fairmont, Marion County, West Virginia.
15. The term "Zoning Administrator" shall mean the Zoning Administrator of the City of Fairmont, West Virginia.
16. The terms "ordinance", "code" shall be synonymous and refer to the City of Fairmont Zoning Ordinance.

## 2.2 INTENT.

For the purpose of interpreting this Zoning Ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Zoning Ordinance shall have their everyday meaning as determined by their dictionary definition.

**Abandonment** - The relinquishment of property or the cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one (1) year.

**Accessory Building** - A building or structure that is clearly incidental to, customarily found in connection with, and located on the same lot as the principal use to which it is related. When an accessory building is attached to the main building in a substantial manner, such as a wall, roof, or breezeway, the accessory building shall be considered a part of the main building for setback purposes.

**Accessory Structure** - A structure subordinate or incidental to the principal use on a lot including but not limited to swimming pools, piers, and other water related structures, parking, fences, gazebo, satellite dishes, dog houses, and dog related structures.

**Accessory Use** - A use on the same lot with, and of a nature customarily incidental and subordinate to the principal use.

**Adjacent, Adjoining Lot or Land** - A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

**Adult Day Care** - Any building used for non-sleeping purposes for less than twenty four (24) hours per day to house one or more well, ambulatory, or semi ambulatory adults none of whom requires medical injections by staff personnel.

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**Adult Entertainment** -Adult Establishments and Entertainment include the following and like uses:

1. **Adult Book Store** - An establishment having substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or related to "specified sexual activities" or "specified anatomical areas", as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.
2. **Adult Business** - An adult book store, adult videotape store, adult motion picture thereafter, or adult entertainment establishment.
3. **Adult Entertainment Establishments** - An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.
4. **Adult Motion Picture Theater** - An establishment used for presenting motion picture material distinguished or characterized by an emphasis on matter depicting describing or relating to "specified sexual activities" or "specified anatomical areas" as defined by this Code, for observation by patrons thereto.
5. **Adult Videotape Store** - An establishment having as a substantial or significant portion of its stock in trade, videotapes which are characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.

**Agriculture** - The production, keeping, or maintenance of plants and animals useful to man, used exclusively as a bonafide agricultural operation by the owner or tenant.

**Alley** - A service roadway providing a secondary means of access to abutting property and not intended for general traffic circulation.

**Alteration** - Any change or expansion in the size, configuration, or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location, or use.

**Amendment, Text** - A change to any text of the Planning and Zoning Code.

**Amendment, Zoning Map** - See Rezoning.

**Apartment Buildings** - A building containing three (3) or more residential dwelling units. Such units may be leased separately or developed as condominiums.

**Approved Development Plan** - A Planned Development Area is an area under single ownership or control to be developed in conformance with an approved development plan. An approved development plan, at a minimum, shall consist of:

1. A map showing the development area and all proposed improvements to be included within the perimeter of the site;
2. A text which sets forth the uses and the development standards which must be satisfied; and
3. Exhibits setting forth any aspects of the development plan not fully described in the map and text.

The uses and standards expressed in the development plan constitute the use and development regulations for the Planned Development Area site in lieu of the regulations for the underlying district.

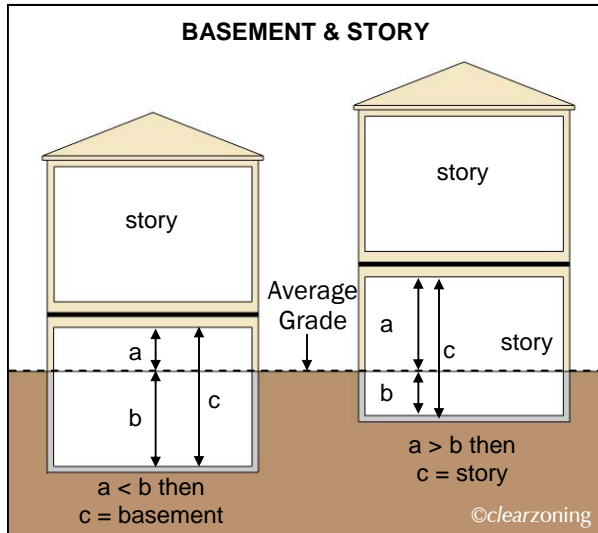
**Arcade** - A walkway adjacent to a building which is covered by a roof yet is not fully enclosed.

**Attached Home** - Buildings that share common sidewalls. Attached homes may be town homes or condominium units.

**Awning** - A roof like structure often made of canvas, plastic or other material, that serves as a shelter placed over a storefront, window, door, or deck.

**Bars and Night Clubs** - Structure or part of a structure serving as a business establishment selling primarily beer and /or alcoholic beverages for consumption on the premises.

**Basement** - A story having one half or more of its clear height below grade.



**Base Flood Elevation** - See Article 1765 Floodplain Regulations.

**Bedroom Unit** - A private room for sleeping quarters separated from other rooms, and accessible to a bathroom without crossing another bedroom.

**Bed and Breakfast Inn** - A use that takes place within a building that prior to such an establishment, was a single family residence, that consists of renting one or more dwelling rooms on a daily basis to tourists, vacationers, and business people, where the provision of meals is limited only to guests. The homeowner shall reside on site.

**Berm** - A raised earth mound which is planted with ornamental vegetation.

**Block** - A unit of land bounded by streets or by a combination of streets and public land, waterways, or any other barrier to the continuity of development.

**Boarding Lodging and Rooming House** - Means buildings in which sleeping rooms are offered providing accommodations for three to sixteen persons, with or without meals, but without separate cooking facilities for individual occupants.

**Buffer** - An area of land, open space, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen adjacent land uses or property, or to separate development from a stream or water body, or an area intended to preserve vegetation along a designated corridor, or to separate one use or property from another so as to visually shield or block noise, lights, or other nuisances.

**Buildable Area** - The area of a lot remaining after the minimum yard and open space requirements of this zoning code has been met.

**Building** - Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property.

**Building Area** - The aggregate of the maximum horizontal cross section area of the main building, on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than three feet, steps, one story open porches, bay windows not extending through more than one story and not projecting more than four feet, balconies, and terraces.

**Building Footprint** - The land area on which a building is located or proposed for location.

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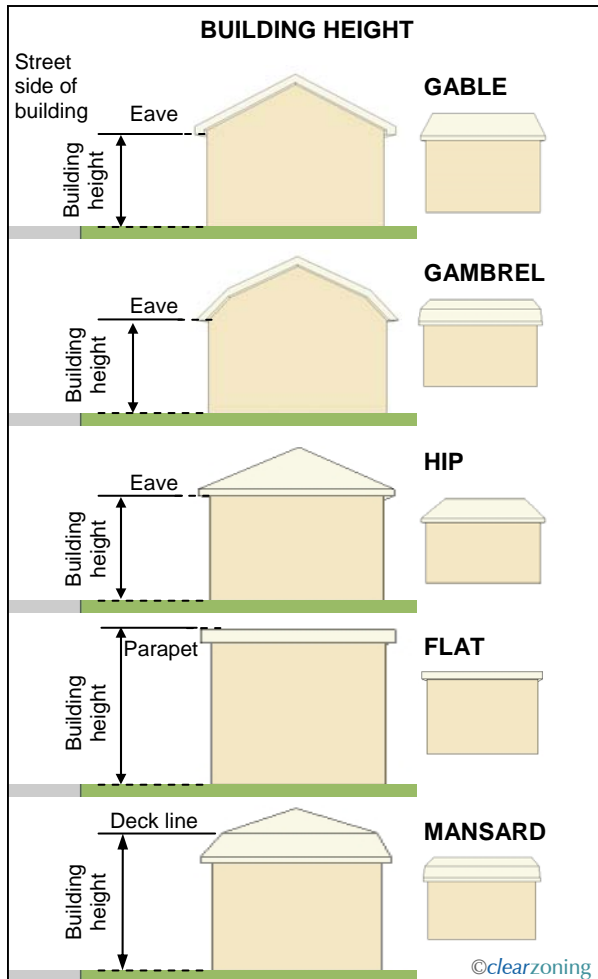
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**Building Height -**

1. In all but the Business Campus district, building height shall be the vertical distance from the mean grade elevation taken at the fronting street side of a structure to the parapet or roof line of a flat roof, the eave of a pitched roof, or the deck line of a mansard roof. Towers, spires, steeples, and enclosed roof top mechanical equipment are not counted in height measurements. Exceptions to this definition are listed within this code. ✍

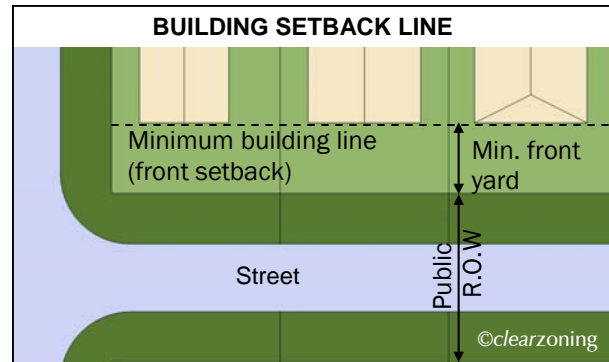


**Building Mass** - The height, width, and depth of a structure.

**Building Permit** - A permit obtained from the City of Fairmont Building Department for the construction, repair, alteration, or addition to a structure, which provides for inspection and sets the construction techniques for a particular project and specified use in accordance with adopted building codes and other prevailing standards for construction, and includes any necessary zoning approval.

**Building, Principal** - A building in which is conducted the principal use of the lot on which it is located.

**Building Setback Line** - A line establishing the minimum allowable distance between the nearest part of any building, but excluding eaves and overhangs, bay windows, and patios, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto. ✍



**Caliper** - The size of a tree's trunk diameter as measured six (6) inches above the ground for trees four(4) inches or less, and as measured twelve (12) inches above the ground for trees larger than four (4) inches.

**Carport** - A roofed accessory structure providing space for the parking of motor vehicles and enclosed on not more than two sides. Carports attached to the principal structure that are enclosed are considered an addition to the principle structure and must meet the building setback requirement for the district.

**Car Wash** - An area of land or structure with machine or hand operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.



**Certificate of Appropriateness** - A certificate stating that work to be done on a structure within the City of Fairmont Downtown Historic District meets the criteria which maintains the structure as historic and a contributing structure to the District.

**Certificate of Occupancy (CO)** - A document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Ordinance and all other applicable regulations.

**Certificate of Zoning Compliance** - A review of existing and proposed uses including Temporary Uses, change of uses permitted by right, and administrative interpretations of planning and zoning standards not requiring Board of Zoning Appeals approval.

**Change of Use** - Any use of a building or land that substantially differs from the previous use.

**Child Care Center** - A facility operated for the care of 13 or more children on a nonresidential basis as determined by and licensed by WV Department of Health and Human Resources.

**Child Care Facility** - Any facility which is used to provide nonresidential child care for compensation for seven (7) to twelve (12) children for four (4) or more hours per day, including children who are living in the household who are under six years of age as determined by and licensed by WV Department of Health and Human Resources. No more than four (4) of the total number of children may be under 24 months of age.

**Child Care Home** - A facility which is used to provide nonresidential child care for compensation in the provider's home. The provider may care for no more than six children, including children who are living in the household, who are under six years of age as determined by and licensed by WV Department of Health and Human Resources. No more than two of the total number of children may be under twenty-four months of age.

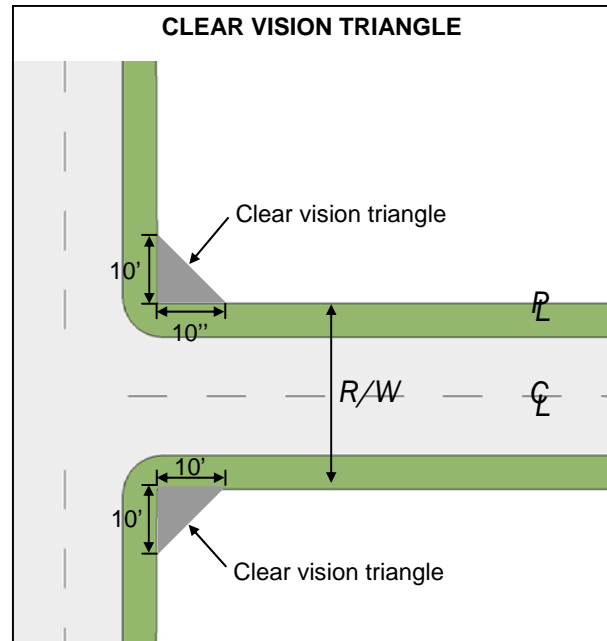
**City** - The City of Fairmont, Marion County, West Virginia.

**City Engineer** - The City Engineer or a duly designated representative.

**Civic Uses** - Uses intended to serve as public gathering places. Such uses include governmental offices, post offices, and non-profit organizations dedicated to arts, culture, and education.

**Clear-Cutting** - The large-scale, indiscriminate removal of trees, shrubs, and undergrowth with the intention of preparing real property for nonagricultural development purposes.

**Clear-Vision Area** - The triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of ten (10) feet from their point of intersection.



**Clinic, Medical or Dental** - A facility where licensed medical professionals deliver human health care services on an outpatient basis.

**Collegiate Club, Fraternity or Sorority House** - Any structure occupied by a club, fraternity, or sorority which is recognized by a club, fraternity, or sorority of a college within the corporate limits of the City which can furnish documented proof of the college administration's approval of its site and activities as provided elsewhere in this Ordinance.

**Comprehensive Plan** - The complete comprehensive survey and studies of existing conditions and probable future growth of the City which is approved by the Planning Commission and Council.

**Conditional Use** - A use subject to specific conditions and which requires the approval of the City of Fairmont Board of Zoning Appeals before the issuance of a conditional use permit for such use.

**Condominium** - A multi-unit dwelling, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the unit owners.

**Construction Documents** - The drawings necessary to prepare a site for construction, guide the construction of improvements, and complete the site following construction of improvements. These plans may include an overall site plan, preliminary subdivision plat, grading plan, soil and erosion control plan, landscaping plan, lighting plan, site details, street cross sections, storm water detention details, etc.

**Contiguous** - Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.

**Convenience Store** - A use where certain retail goods and gasoline are sold at the retail level.

**Council** - The Council of the City.

**Country Club** - Land area and buildings containing recreational facilities, clubhouses and customary accessory uses which are open to members and their guests, or to the general public on a fee basis.

**Cul-de-sac** - A street designed with a closed end and does not intersect with another street which is terminated by a vehicular turnaround.

**Deciduous** - Shrubs and trees that lose their leaves annually.

**Density, Gross** - The number of dwelling units on the entire area of a tract or parcel of land.

**Density, Net** - The number of dwelling units on a tract or parcel of land minus the area of public rights-of-way, areas of flood hazard, lakes or water bodies, or wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

**Developer** - The legal or beneficial owner or owners of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase or other persons having enforceable proprietary interests in such land.

**Development** - The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; the removal of ground cover, and any use or extension of the use of land.

**Development Review Committee** - A committee comprised of City staff and employees charged with preliminary technical review of Subdivisions, Site Plans, and Construction Documents. The departments represented on the Committee include Planning, Building, Public Works, Engineering, Stormwater, Police, and Fire.

**District** - An area delineated on the Land Development or Zoning Map which sets forth standards and guidelines for all development within.

**District, Overlay** - A zoning district that encompasses one or more underlying zoning district and that imposes additional requirements above that required by the underlying zoning district.

**Drip Line** - An imaginary vertical line extending from the outer most portion of the tree canopy to the ground that defines the exterior limits of the tree canopy.

**Drive-Through Window Facility** - A facility designed to enable a person to transact business while remaining in a motor vehicle.

**Driveway** - A private roadway providing ingress and egress of vehicles from a street or thoroughfare to a property. Parking areas are separate from driveways, though the two maybe combined.



**Dormitories** - Buildings or spaces in buildings where group sleeping accommodations are provided for more than sixteen persons not members of the same family group in one room or a series of closely associated rooms under joint occupancy and single management with or without meals, but with separate cooking facilities

**Duplex** - A structure containing two dwelling units, totally separated from each other by an unpierced wall extending from the ground to the roof, each of which has direct access to the outside.

**Dwelling or Dwelling Unit** - A building, or any portion thereof, providing complete and permanent human living facilities. This term shall not apply to a hotel, motel, guesthouse, or other structures designed for transient residence.

1. A one or single family dwelling means a building designed for or occupied exclusively by one family.
2. A two family dwelling means a building designed for or occupied exclusively by two families.
3. A multiple dwelling means a building designed for or occupied by more than two families.

**Easement** - A grant by the property owner of a strip of land for specified purposes and use by the public, a corporation, or persons, such as for utilities.

**Eave** - The projecting lower edges of a roof overhanging the wall of a building.

**Encroachments** - Any portion of a structure or appurtenance extending beyond a designated zoning setback, easement, property line, or public right-of-way.

**Entertainment Use** - Any establishment which provides active recreational opportunities such as miniature golf, batting cages, arcades, carnival games, go-cart or other motorized vehicle tracks, waterslides, or passive recreation such as movie theaters and other similar uses.

**Entrance, Primary** - The principal, functional doorway for public or direct-entry access into a building.

**Essential Services** - The erection, construction, alteration or maintenance by public utilities, municipal departments or commissions, or any governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution system, collection, communication, supply or disposal system, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, electrical substations, telephone exchange buildings, gas regulator stations, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of utility service by such public utilities, municipal departments, commissions or any governmental agencies, or for the public health, safety or welfare. For the purpose of this Ordinance, wireless communications towers and antennas or wind driven devices to generate power are not considered essential services.

**Evergreen** - Shrubs and trees that retain their foliage throughout the year.

**Existing Use** - The use of land, buildings or activity permitted or in existence prior to the adoption of this Zoning Ordinance or that at a minimum have established a vested right as of the effective date of this ordinance based on the following being satisfactorily proven to the Planning Department for the specific use, development or project in question:

1. Substantial expenditures of resources (time, labor, money) on the project;
2. Whether the landowner acted in good faith;
3. Whether the landowner had notice of the proposed Zoning Ordinance before starting the project at issue; and
4. Whether the expenditures could apply to other uses of the land.

**Existing Lot (Lot of Record)** - A lot which is part of a subdivision, a plat of which has been approved by the City of Fairmont and recorded in the Office of the Clerk of the County Commission of Marion County, West Virginia prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so approved recorded prior to the adoption of this ordinance.

**Facade** - The vertical surface of a building which is set along a frontage line. The elevation of a facade is the vertical surface area.



**Facilities** - In relation to institutions of higher learning shall include classrooms, laboratory, and research facilities, administration facilities, athletic centers and facilities, auditoriums, student centers, libraries, museums, cafeterias, dormitories, maintenance facilities, student infirmaries, campus police/security offices, and parking areas.

**Factory Built Homes** - A structure designed for long term residential use. For the purposes of these regulations, factory built housing consists of 3 types: mobile home, modular, and manufactured homes.

**Family** - An individual or two or more persons related by blood, marriage, adoption or foster relationship living together in a dwelling unit.

**Family Care Home** - See Residential Care Home.

**Farm** - The raising of crops or livestock, including orchards, vineyards, or nurseries, along with any buildings or structures necessary to conduct such activities.

**FEMA (Federal Emergency Management Authority)** - The agency responsible for the promulgation and maintenance of official Flood Hazard Boundary Map and/or Flood Insurance Rate Maps.

**Fence** - A structure used to delineate, enclose, screen, separate or define a boundary, particularly for privacy or to delineate the public or private realm of a property.

**Final Approval** - The official action of the Planning Commission on a plat and application meeting all the requirements, conditions and engineering considerations required by these Regulations and Zoning Ordinance.

**Final Plat** - The final map of the subdivision on which the subdivider's plan of subdivision is presented to the Planning Commission for approval, and which, if approved, will be submitted to the County Clerk for recording.

**Floor Area, Gross** - The sum of the gross horizontal floor area of a building excluding areas used for accessory garage purposes and such basement areas as are devoted exclusively to uses accessory to the operation of the building. All horizontal dimensions shall be taken from the exterior faces of the walls, including walls or other enclosures of enclosed porches.

**Frontage** - The lot boundary which coincides with a public thoroughfare or space. The facade of a structure facing the street.

**Frontage Build-out Line** - The portion of lot frontage which has a building or wall running parallel to it.

**Garage Sales** - This term is used to broadly define temporary sales events of common household items located at a residential home. The term includes but is not limited to sale events referred to as garage, yard, porch, or apartment sales.

**Gazebo** - A freestanding, roofed, open sided structure providing a shady resting place.

**Gross Leasable Area** - Specifically, gross leasable area is defined as the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors.

**Ground Cover** - A prostrate plant grown less than 2 feet in height at maturity which is grown for ornamental purposes. Ground covers are used as an alternative to grasses. On slopes, ground covers control erosion while eliminating the maintenance of mowing hillsides. Many groundcovers survive in poor soils, shade and other adverse conditions.

**Group Residential Facility** - A facility which is owned, leased or operated by a behavioral health service provider and which:

1. Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled;
2. Is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors;
3. Is licensed by the Department of Health and Human Resources; and
4. Complies with the State Fire Commission for residential facilities.

**Group Residential Home** - A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in this article.

**Halfway House** - See Group Residential Home.

**Hardship** - An unusual situation, not self-created or economic in nature that prevents the full utilization of the property, or denies the right to use property, as others may do within the same zone.

**High Technology Industries** - In the Technology District shall include the following:

1. Information management technology, research, development, testing and evaluation;
2. Research, development, testing and evaluation, excluding chemical, biological and metallurgical technologies;
3. Storage and retrieval of information; and
4. Educational, scientific and research organizations.

**Hillside Development/Subdivision** - A hillside development is defined as one in which the percent slope of the land within the subdivision or minor land division is fifteen percent (15%).

**Historic Landmark** - A site, building, structure or object designated as a landmark either on a national, state or local registry

**Historic Structure** - Any structure designated or eligible for designation on the National Register for Historic Places.

**Historical District** - A district or zone designated by a local authority or state or federal government within which the buildings, structures, appurtenances, and places are of basic and vital importance because of their association with history; or because of their unique architectural style and scale, including color, proportion, form and architectural detail; or because of their being a part of or related to a square, park, or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical, or architectural motives or purposes.

**Home Occupation** - A home occupation is an occupation or business activity which results in a product or service and is conducted in whole or in part in the dwelling unit, and is clearly subordinate to the residential use of the dwelling unit [See Section 4.17](#) for restrictions.

**Hospital** - A building or portion thereof used for the treatment of sick, injured, or infirmed persons and accredited by the American Hospital Association.

**Hotel/Motel/Inn** - A building facility containing sleeping rooms offering transient lodging accommodations to the general public for rental or occupancy and providing additional services, such as restaurants, meeting rooms, entertainment, and recreational facilities

**Housekeeping Unit** - The maximum number of unrelated individuals permitted to reside in any single dwelling unit in the various zoning districts. See [Section 4.18](#) for specifications.

**Impound Facility** - A place of secured temporary motor vehicle storage, exclusive of mini storage facilities, where vehicles in operable condition, or capable of being returned to operable condition, are commercially stored for not more than thirty days.



**Industrial Uses and Development** - Any non-residential use that requires an NPDES permit for an industrial or storm water discharge or involves the use or storage of any hazardous materials or substances or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Industry, Heavy** - A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in the storage of, or manufacturing processes that potentially involve, hazardous or commonly recognized offensive conditions.

**Industry, Light** - A use engaged in the basic processing and manufacture, predominantly from previously prepared, materials of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

**Infill Development** - To fill in vacant or underused land in existing communities with new development which blends in with its surroundings.

**Institutional Uses** - Large scale civic and semi-civic uses such as elementary and secondary schools, colleges, hospitals, assisted living facilities, convents, monasteries, hospices, and other long-term medical care facilities.

**Interstate Highway** - A controlled access highway, which is part of the Federal Interstate Highway System.

**Island, Landscape** - In parking lot design, built-up structures, usually curbed, placed at the end or middle of parking rows as a guide to traffic and for landscaping, signage, or lighting.

**Junk** - Any worn out or cast off or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use.

**Junk Yard** - The use of more than one thousand square feet of the area of any lot; whether inside or outside a building, or the use of any portion of that half of the lot that joins any street, for the storage, keeping, or abandonment of junk.

**Landfill** - Any solid waste facility for the disposal of solid waste on land as defined by West Virginia Code §22-16-1 et seq., or other applicable solid waste disposal statute or rule.

**Landscaped Areas** - Any portion of a site or property containing vegetation following construction activity completion.

**Landscaping Plan** - The Site Plan Application prescribed by this Ordinance which details pre-construction protection of existing vegetation and post construction supplemental plantings.

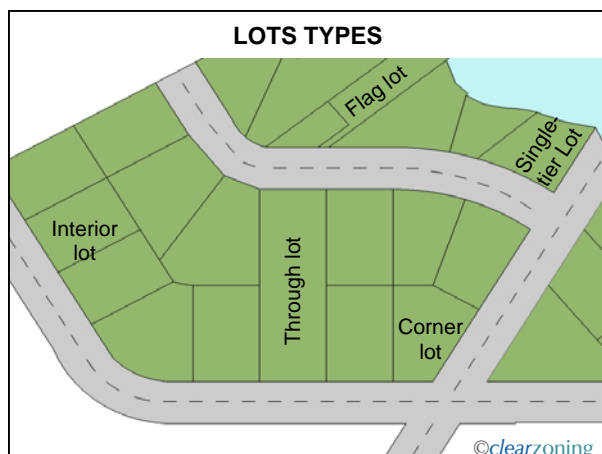
**Live-Work Unit** - See Mixed-Use Building.

**Loading Space** - An off street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of motor vehicles while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

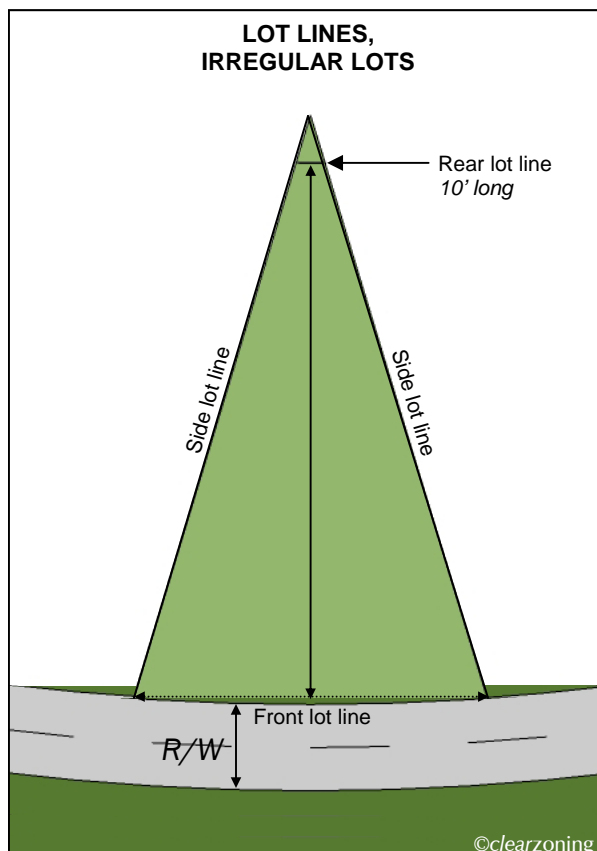
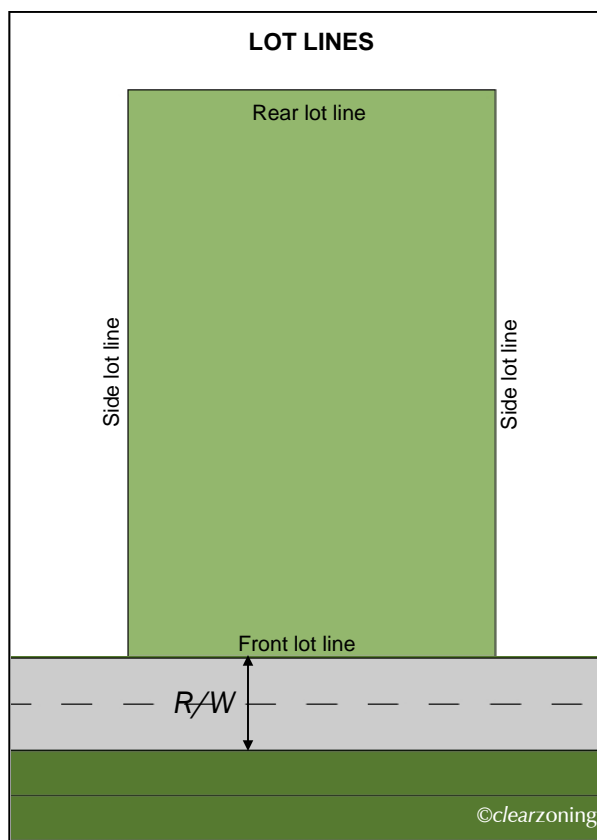
**Lot** - A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title which is occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

**Lot Types:**

1. **Corner Lot** - A lot located at the intersection of 2 or more streets. 📐
2. **Interior Lot** - A lot other than a corner lot with only one frontage on a street. 📐
3. **Flag Lot** - A large lot not meeting minimum frontage requirements and where access to the public road is by a narrow, private right-of-way or driveway. 📐
4. **Through Lot (Also Double Frontage, Reverse Frontage)** - Lot other than a corner lot with frontage on more than one street. Through lots abutting 2 streets may be referred to as double frontage lots. 📐
5. **Single-Tier Lot** - A lot which backs up to a limited access highway, a railroad, a water body, a physical barrier, or another type of land use and to which access from the rear is usually prohibited. 📐

**Lot Lines** - Lines bounding a lot as defined herein.

1. **Side** means any lot line other than a front or rear lot line. 📐
2. **Front** means in the case of an interior lot, a line separating the lot from the street or place; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in cases where deed restrictions in effect specify another line as the front property line. 📐
3. **Rear** means a lot line which is opposite and more distant from the front lot line, and in the case of an irregular lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line. 📐





**Low Impact Development (LID)** - An approach to land development that uses various land planning and design practices and technologies to simultaneously conserve and protect natural resources systems and reduce infrastructure costs. LID allows land to be developed, but in a cost-effective manner that helps mitigate potential environmental impacts.

**Main Arterial Road** - The primary function of an arterial road is to deliver traffic from collector roads to freeways, and between urban centers at the highest level of service possible.

**Major Plat Revisions** - All revisions to approved preliminary plats that are not considered minor revisions. These typically include revisions that are determined by the City Planner to constitute a public interest.

**Major Subdivision.** All subdivisions not classified as minor subdivisions, including but not limited to subdivision of four or more lots, or any size subdivision requiring any new street or extension of the local government facilities, or the creation of any public improvements.

**Manufactured Home Park** - A parcel or subdivision of land to accommodate manufactured housing per the provisions of this ordinance.

**Manufactured Housing/Manufactured Single Family Dwelling** - Factory-built, single-family structures that meet the Federal Manufactured Home Construction and Safety Standards effective the 15th day of June, 1976, (42 U.S.C. Sec.5401) also known as the HUD Code

**Manufacturing, Heavy** - The assembly, fabrication, production or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use.

**Manufacturing, Light** - The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, production or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, production or processing does not exceed 25 percent of the floor area of all buildings on the lot. This shall not include uses that constitute "heavy" manufacturing", resource extraction, or recycling and salvage operations.

**Marina** - A facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests. See Water Related Structure, Pier.

**Mass Transit** - A public common carrier transportation system for people having established routes and fixed schedules.

**Master Development Plan** - A scaled site specific drawing of a proposed development that includes a subdivision of land and proposed buildings and/or improvements.

**Mechanical Equipment** - All HVAC (heating, ventilation, and air-conditioning) equipment located on the roof of a building or outside a home or building.

**Mini-Storage Facilities** - A building or group of buildings in which two or more individual spaces not exceeding sixteen hundred cubic feet each are offered for lease for storage of items composed of non-hazardous materials.

**Minor Boundary Adjustment** - Any boundary adjustment which is the result of a survey of an existing tract or parcel of land when such survey differs from a previous survey by virtue of inaccuracy of such previous survey or any adjustment in lot lines which does not result in the creation of a new lot or parcel and does not reduce the area of any existing parcel below 6,000 square feet.

**Minor Plat Revisions** - Insignificant shifts in street and open space locations, minor changes to lot size, minor changes to unit size and distribution of intensity; minor shifts in lot lines; and other changes, which do not alter the general layout and intensity of the approved Preliminary Plat or have a significant impact on proposed or existing infrastructure as determined by the City Planner.

**Minor Subdivision** - A Subdivision containing not more than three lots fronting on an existing street, not involving any new street or road, or the extension of municipal facilities, or the creation of any public improvements, not adversely affecting the remainder of the parcel or adjoining property, and not adversely affecting the Comprehensive Plan, Zoning Ordinance, or these Regulations. Additionally, the following types of subdivisions shall be categorized as minor subdivisions: (1) Mergers or consolidations of parcels of land; and (2) Minor boundary adjustments.

**Mixed Use** - The presence of residential and nonresidential complementary uses within the same complex or same building. Mixed use can also refer to different categories of nonresidential uses such as institutional, retail, and office within the same complex of building. The advantage of mixed uses is the promotion of architectural compatibility and pedestrian scaled environments.

**Mixed-Use Building** - Small commercial enterprises with the ground floor occupied by commercial uses and a residential unit above. Commercial space may be a home-based business or may be leased independently.

**Mobile Home** - A residential dwelling that was fabricated in an off-site manufacturing facility designed to be a permanent residence, built prior to enactment of the Federal Manufactured Home Construction and Safety Standards Act also known as the HUD Code.

**Mobile Home Park** - A lot used, designed or intended to be used for the purpose of supplying parking space for four or more occupied mobile homes and which include buildings, structures, motor vehicles or enclosures used or intended to be used as part of the operation of the mobile home park.

**Mobile Vending** - This term is used to describe various mobile retail businesses including but not limited to the following:

1. **Mobile Vending Cart:** A movable push cart that is operated by a vendor standing on the sidewalk.
2. **Mobile Vending Trailer:** A mobile trailer operated by a vendor standing on or within the frame of the trailer on the public right of way or within a public or private parking lot.
3. **Mobile Vending Vehicle:** A motorized vehicle operated by a vendor standing on or within the frame of the vehicle on the public right of way or within a public or private parking lot.

**Modular Home** - A dwelling unit which is constructed in compliance with the West Virginia State Building Code and composed of components substantially assembled in an offsite manufacturing plant and transported to the building site for final assembly on a permanent foundation.

**Motel** - See Hotel.

**Motor Vehicle** - Includes any automobile, truck, tractor, truck-tractor, trailer, semi-trailer, motorbus, taxi cab, and any self-propelling motor driven vehicle or any combination thereof used for the purposes of transporting persons or property.

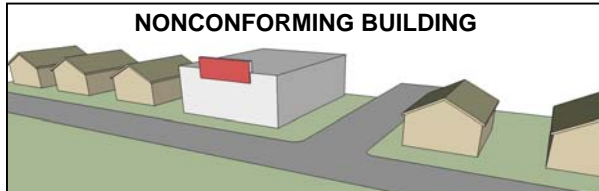
**Neighborhood Commercial Use** - Commercial activities which include retail sales establishments, office uses (i.e. medical, financial), service industry uses (i.e.: restaurants, inns), and convenience stores which are designed and/or operated to service the daily needs of the residents of the surrounding neighborhood.

**Nightclub** - See Bars and Nightclubs

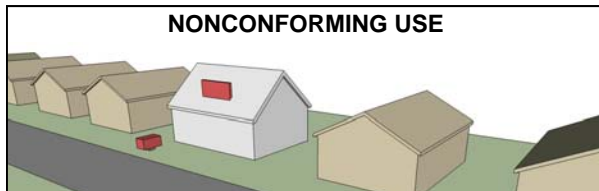
**Nonconforming Lot** - A legally created lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the Zoning Ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.



**Nonconforming Structure or Building** - A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to the Zoning Ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district. ✍



**Non-Conforming Uses** - Any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, which exists on the effective date of this Ordinance or on the effective date of any amendment thereto, and renders such existing use illegal within a district, or which does not comply in any fashion with any of the rules, requirements and regulations of this ordinance or any amendments thereto. ✍



**Non-Residential Development** - All development other than one or two family residential development, agriculture and silviculture.

**Nuisance** - An act or omission or use of property which is of itself harmful to health, tranquility or morals of the community

**Office Use** - Professional, service, and governmental occupations within a building or buildings which do not generally involve the on-site sale of goods to customers.

**Official Map** - The map established by Council showing the streets, highways and parks theretofore laid out, adopted and established by ordinance and any amendments thereto adopted by Council.

**Off-Street Parking** - Parking which occurs on a lot and not on a street or other public right of way.

**On Site, Off Site** - Located on the lot relative to a use, or structure; or located off the lot relative to a use, or structure.

**One-Family Home** - See Single Family Residential or Dwelling Unit

**Open Decks and Patios** - Permanent uncovered accessory structures that project from an existing principal use.

**Open Space** - Any area which does not consist of streets, right of ways, parking, or easements, and serves as a passive or active recreational area, as conservation land for important vistas and topographic features, or as pervious cover for watershed requirements. This area provides, or has the potential to provide, environmental, social and/or economic benefits to the community whether direct or indirect.

**Ordinance** - A document of regulations enforceable as municipal law.

**Ornamental Tree, Shrub** - A deciduous or evergreen tree or shrub planted primarily for its ornamental value or for screening purposes.

**Outdoor Kennel** - The containment of animals outside a permanently constructed building for an extended period of time. This does not include fenced areas for brief animal exercise.

**Outdoor Sales/Display** - The sale or display of products outside of a permanently constructed building or structure, including but not limited to vehicles, garden supplies, gas, tires and motor oil, food and beverages, boats and aircraft, farm equipment, motor homes, burial monuments, building and landscape materials, and lumber yards. This does not include occasional "sidewalk" sales or promotions.

**Outdoor Storage** - The storage of goods, products, or vehicles as an ancillary use by their owner or on a commercial basis outside of a permanently constructed building.



**Out Parcel** - A parcel of land associated with and located within a shopping center or multi-tenant nonresidential development, which is designated on an approved site plan as a location for a structure with an intended commercial use.

**Overlay District** - A set of regulations which add an additional layer of design provisions to an underlying zoning district.

**Owner** - Any individual, firm, association, syndicate, estate, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under the Subdivision Regulations.

**Parapet** - That portion of a building wall or false front that extends above the roof line.

**Parcel** - A contiguous lot or tract of land owned and recorded as the property of the same persons or controlled by a single entity.

**Park** - Land owned by the City of Fairmont or another unit of government, which is used or intended for use for active or passive public recreation.

**Park and Ride Facility** - A parking lot designed for drivers to leave their cars and use mass transit facilities beginning, terminating, or stopping within immediate walking distance of the park and ride facility

**Parking Area or Parking Lot** - All the area in square footage of land designated for the storage of cars. The parking area also includes all areas for storage and trash facilities. Any public or private area, under or outside of a building or structure, designed and used for parking or storing motor vehicles including parking lots, garages, private driveways, and legally designated areas of public streets.

**Parking Space** - A space which is designed for the parking or temporary storage of an automobile as prescribed by this ordinance.

**Party Wall** - A common shared wall between two separate structures, buildings or dwelling units and lacking cross access between structures without exiting each structure.

**Paved** - Any surface area covered by concrete, asphalt, brick or stone pavers, or similar material in durability, appearance, and permeability.

**Performance Guarantee** - Any security or bond that may be accepted or required by the City to assure that improvements required as part of an application for development will be satisfactorily completed.

**Permanent Open Space** - Permanent open space shall be categorized as one of two types:

1. **Improved Open Space** - Parks, playgrounds, swimming pools, ball fields, plazas, landscaped green spaces, and other areas that are created or modified by man. At least thirty (30) percent of the total permanent open space in any given Planned Development Area shall be of the Improved Open Space type.
2. **Natural Open Space** - Areas of natural vegetation, water bodies, or other landforms that are to be left undisturbed. Creation of a graded and surfaced walking trail for pedestrian and biking use only through areas of Natural Open Space shall constitute natural open space for purposes of this Chapter in area equivalent in area to the length of the walking or biking trail multiplied by its width.
3. Neither definition of open space shall include schools, community centers or other similar areas in public ownership.

**Permitted Use** - Any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

**Person** - An individual, firm, partnership, association, corporation, syndicate, trust, estate or other legal entity acting as a unit.

**Pervious Surface** - Any material that permits full or partial absorption of storm water into previously unimproved land.



**Pier and Pier Facility** - A water-related structure extending into the water from the shore, whether floating or fixed to the lake bottom, for use as a boat landing place or promenade, constructed of pylons and decking for mooring and access to a boat or watercraft.

**Plan** - A written description for the development of land.

**Planning Commission** - The City of Fairmont Planning Commission.

**Plat** - A map of the land development.

**Plat, Final** - A map of all or a portion of a subdivision that is the legal instrument for recordation. Final plats for Major Subdivisions or Master Plans shall be consistent with the approved Preliminary Plat and be recorded following Construction Document approval.

**Plat, Preliminary** - A map indicating the layout of a subdivision, typically submitted and approved with Construction Drawings for a Major Subdivision or Master Plan.

**Platted Lot** - A lot surveyed and of record in the Office of the Clerk of the County Commission of Marion County, West Virginia.

**Playground** - An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

**Porch** - A projection from the outside wall of a dwelling covered by a roof which can project beyond a setback. Roofed open areas may be screened, attached to or part of and with direct access to or from a building.

**Portable Storage Containers** - Containers transported to a designated location for storage purposes (typically known as PODS, MODS, etc). If such a container remains on a site for longer than 30 days it shall be considered an Accessory Building and must obtain a building permit and adhere to all requirements of this Code including setbacks, placement, and architectural standards.

**Portico** - An open porch or walkway covered by a roof and typically leading to the building entrance.

**Preferred Development** - A geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities

**Preliminary Plat** - The preliminary map, drawing or chart indicating the proposed layout of the subdivision to be submitted to the City Planner or duly designated representative for preliminary approval.

**Premises** - All of a parcel of real property with a separate and distinct number and designation shown on a recorded plat, survey, parcel map, subdivision map, or a parcel legally created or established pursuant to this Ordinance. Out parcels of shopping centers shall be considered on the premises of the shopping center for the purpose of these regulations.

**Principal Building** - A building in which the principal use of the premises is conducted.

**Private Driveway** - A privately maintained roadway serving 2 or fewer lots, building sites or other division of land and not intended to be public ingress or egress

**Private Street** - An undedicated private right-of-way or easement which affords access to abutting properties.

**Property** - Real property and fixtures subject to the provisions of this Ordinance.

**Public Hearing** - A meeting open to the public advertised in advance in the local printed media, or as otherwise required by statute, concerning proposed ordinances, amendments or other official City business which require public participation and input.

**Public Sites** - Land dedicated or reserved for public use other than streets and alleys.

**Public Space** - Any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by the City of Fairmont, any other governing body or unit of government.

**Public Street** - Any public right of way used for vehicular traffic that is maintained by the City of Fairmont or State of West Virginia and which is open to all traffic.

**Public Utilities** - Above ground or underground publicly licensed utilities including water, sanitary sewer collection and distribution line, natural gas, cable television, storm water drainage, transit or transportation, or electrical services and any associated structures such as pumping stations, treatment plants, transformer stations for providing to the public a utility service deemed necessary for the public health, safety, and welfare. Utility service to the public has been defined broadly to mean all consumers industrial, commercial, or residential.

**Recreation, Active** - Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or field.

**Recreation, Passive** - Activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, chess, checkers, and similar table games.

**Recreational Facilities** - An area of land or combination of land and water resources for public use that is developed for active and/or passive recreational pursuits with various manmade features that accommodates such activities. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways.

**Recreational Vehicle** - A vehicular-type portable structure without permanent foundation that can be towed, hauled or driven and primarily designed as a temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

**Recycling** - Any process by which goods and materials are collected and / or converted for reuse.

**Required Building Line (RBL)** - The RBL shall be consistent with the established dimension of existing main buildings. The RBL for a new structure or addition shall be equal to, or the average of the front setbacks of existing main buildings within 200 feet of the lot where the front yard setbacks are established.

**Reservation** - The setting aside of parcels of land for a specific purpose including the future development of streets, parks, and civic buildings.

**Residential Development** - Buildings for residential use such as attached and detached single-family dwellings, apartment buildings, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.

**Restaurant** - An establishment with an equipped kitchen whose primary business is the preparation of food items for meals for sale and consumption on the premises and does not include the sale of alcohol.

**Restaurant/Lounge** - An establishment with an equipped kitchen whose primary business is the preparation of meals for sale and consumption on the premises and which upon proper licensing and subject to the requirements in [Section 4.32](#) may serve beer and/or alcoholic beverages incidental to the sale of food.

1. **"An equipped kitchen"** means a kitchen containing at least one range with an oven and no fewer than two burners; one sink with hot and cold running water; one cold storage unit or refrigerator at least seventeen cubic feet in size; and cooking utensils and pots and pans sufficient for preparation of the required meals.
2. **"Meals"** means food consisting of one item or any combination of items. Examples of items which, by themselves, do not qualify as adequate are such items as: packaged potato chips and similar products; packaged crackers; packaged nuts; packaged desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products. The key word in the definition of meals is "preparation".



**Restaurant, Drive In** - An establishment that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.

**Restaurant, Fast Food** - An establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready to consume individual servings, for consumption either within the restaurant building or for carry out, and where either:

1. Foods, frozen desserts, or beverages are usually served in paper plastic or other disposable containers, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed; or
2. The establishment includes a drive up or drive through service facility or offers curb service.

**Retail Sales** - Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

**Rezoning, Standard** - An amendment to the official zoning map of the City of Fairmont which affects the classification of property.

**Right-of-Way (R-O-W)** - A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another special use. The usage of the term "right-of-way" for land-platting purposes means that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right of way and not included within the dimensions or areas of such lots or parcels. Rights of way intended for streets, crossways, water mains, sanitary sewers, storm drains, shade trees, or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

**Roofline** - The highest point of a flat roof and the lowest point of a pitched or mansard roof. Cupolas, chimneys, towers or other minor projections above the roofline are excluded.

**Sales and Service, Automobile/Boat/Heavy Equipment/Manufactured Home** - Any building, premises, and land, in which or upon the primary use of land is a business which involves the maintenance, servicing or sale of new or used automobiles, boats, heavy equipment and/or manufactured homes generally but may include light trucks or vans, trailers, or recreation vehicles and including any vehicle leasing, rental, parking service, preparation or repair work conducted as an accessory use. This definition includes but is not limited to auto dealerships, auto body shops, auto service stations, boat repair or sales, car washes, convenience stores, gas stations, heavy equipment leasing, sales, or service, manufactured home sales or service, and oil/lube servicing. This does not include the sale of parts or related products (i.e. auto parts store).

**Salvage** - Old or scrap brass, copper, iron, steel, or other ferrous or non-ferrous materials, batteries or rubber and any junked, dismantled or wrecked, machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked, machinery, machines or motor vehicles.

**Salvage Yard** - Any place which is maintained, operated or used for the storing or keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: provided, however, that no salvage yard shall accept, store or process more than one hundred waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the Division of Environmental Protection for the proper disposal of the waste tires.



**Satellite Dish Antenna** - Any antenna including any supporting structure designed to receive or transmit visual and/or verbal signals via orbiting satellites or similar sources, excluding microwave antennae.

**School** - A public or private institution for education or learning including athletic or recreational facilities, which does not include lodging. This institution includes any school licensed by the state and that meets the state requirements for elementary and secondary education. Site criteria for each respective school classification shall follow the minimum campus requirements generally recognized by the State School Building Authority.

**Senior Citizen Housing** - A multi-family dwelling exclusively for senior citizens, handicapped persons, or as may be defined by State and Federal regulations.

**Setback** - See Building Setback Line

**Shrub** - Vegetation that is planted for ornamental or screening purposes.

**Sign** - Unless a contrary meaning is indicated from the context of a specific provision of [Section 5.3](#) for the purpose of [Section 5.3](#), certain terms and words are defined as follows:

1. **Awning** - An architectural feature or projection that provides weather protection, identity, or decoration and is wholly supported by the building to which it is attached. An awning is comprised of a light weight rigid skeleton structure over which a rigid covering is attached.
2. **Banner Sign** - Any sign intended to be hung, with or without frames, possessing characters, letters, illustrations or ornamentations applied to paper, plastic or fabric of any kind.
3. **Barber Pole** - A sign which is specifically painted or striped to advertise a barbershop.
4. **Canopy** - An architectural projection that provides weather protection, identity, or decoration and is supported by the building to which it is attached and at the outer end by not less than two stanchions. A canopy is comprised of a rigid structure over which a rigid covering is attached.

5. **Changeable Letter Freestanding Sign** - A sign designed to be temporary and portable in nature which may or may not be illuminated with electrical lights and which has letters which may be changed to advertise events, business openings, and sales, among other things.
6. **Changeable Copy Sign** - A permanent sign which may or may not be illuminated with electrical lights and which has letters which may change to advertise events, business openings, and sales, among other things.
7. **Commercial Sign** - Any sign advertising a business or a good being offered by another party.
8. **Community Facilities** - Any public building or service focused upon serving particular neighborhoods or areas.
9. **Construction Sign** - Any sign erected or affixed to a building used to announce the names of the architect, engineer, contractors, or financiers of a building under construction, alteration, or repair to a building where such construction is occurring.
10. **Door Sign** - Any sign painted or lettered directly on the surface of any window or door of a building or other structure.
11. **Dynamic Sign** - Any sign designed for outdoor use that is capable of displaying a video signal, including, but not limited to, cathode-ray tubes (CRT), light-emitting diode (LED) displays, plasma displays, liquid-crystal displays (LCD), or other technologies used in commercially available televisions or computer monitors.
12. **Electronic Changing Message Sign** - An electronically activated sign whose message content, either in whole or in part, may be changed by means of electronics or digital programming.



13. **Emergency Non-Advertising Sign** - Any emergency non-advertising sign which is approved by the Director of Public Works or the City Building Inspector.
14. **Ground Sign** - Any sign supported by structures or supports in or upon the ground and independent of support from any building.
15. **Hours of Operation Sign** - A sign which contains no moving parts and which exclusively advertises, indicates or states the business hours of an establishment or entity.
16. **Illuminated Sign** - Any sign lit in any manner by an artificial light source.
17. **Interior Sign** - Any sign placed in the inside of a building and not visible from outside the building.
18. **Imbedded Building Sign** - Any sign which is imbedded or set into a building and which is so constructed and erected as to become an integral and permanent part of the building.
19. **Kiosks** - A small standalone sign used to advertise events or other onsite activities.
20. **Marquee** - A permanent roofed structure including attached objects or decorations, attached to and supported by the building.
21. **Marquee Sign** - Any sign attached to and made part of any marquee, canopy, awning or port-cochere which is defined as a permanent roof-like structure projecting beyond a building wall and designed to provide protection against the weather.
22. **Monument Sign** - Any sign which is supported by a base of at least 75% of the sign width and is independent from any building.

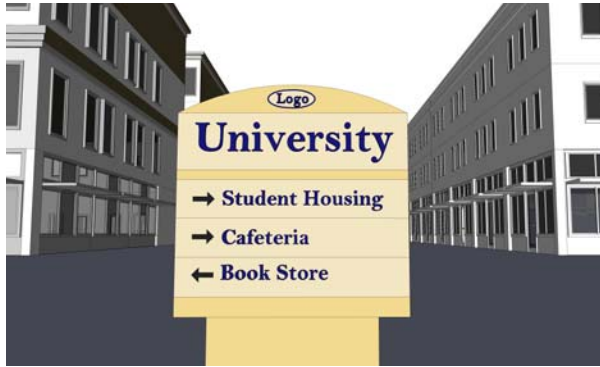


23. **Multi-Tenant Sign** - Any sign which designates a multi-tenant development whether designated as a business park, business center, strip mall, shopping center, whether professional, retail, industrial or otherwise, which consists of one large sign that advertises or designates the business park, center, or mall and incorporates or provides a location for the individual signs of the members or individual establishments within said business park, center or mall.

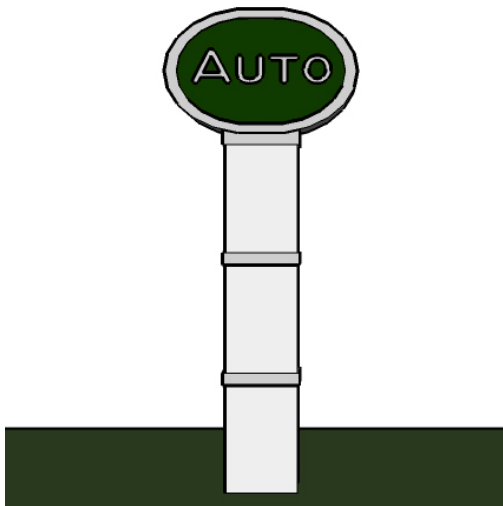


24. **Noncommercial Sign** - Any sign expressing opinions or commentary related to ideas and values and refrains from conveying any message soliciting goods or services.
25. **Off-Site Advertising Sign or Billboard** - Any sign the subject matter of which relates to products, accommodations, goods, services, or activities which are sold or offered from a site, parcel of real estate, location or premises other than that upon which the sign is located.
26. **Off-Site Directional Sign** - Any sign which identifies or advertises the existence or location of any entity or establishment and which sign is located on a site, parcel of real estate, location, or premises other than that upon which the entity or establishment is located.

27. **On-Site Directional Sign** - Any sign which identifies the entrance or exit to an entity, establishment, business, or other site or which may be necessary for the convenience and safety of vehicles and pedestrians utilizing the site.



28. **Pole Sign** - Any sign erected on a single or multi-post or column placed in the ground.



29. **Political Sign** - Any sign which identifies or is indicative of any candidate seeking nomination or election to any national, state, or local office.
30. **Political Subdivision** - Local governments created by the state to help fulfill their obligations
31. **Portable Sign** - Any sign that is capable of being moved by one person without machinery from one location to another for the purpose of advertisement or announcement for business or other purposes.

32. **Projecting Sign** - Any on-premise sign that is wholly or partly dependent upon a building for support and projects in whole or in part a determined distance beyond the surface of the building to which the sign is attached.
33. **Public Bulletin Board** - Any sign which identifies a governmental, charitable, non-profit or



religious institution and which is located on the premises of such institution.

34. **Real Estate Sign** - Any sign which advertises the sale, rental or leasing of existing commercial or residential buildings or structures or any portion thereof and which is located on the premises being offered for sale, lease or rent.
35. **Roof Sign** - Any sign erected or constructed upon the top portion of a roof and supported solely by the roof structure.
36. **Sandwich Board Sign** - A two-part sign which is hinged at the top and connected at the sides and is designed to be free standing portable and temporary in nature.



37. **Scrolling Message Sign** - A sign using a mode of message transition on an electronic message sign where the message appears to move vertically or horizontally across the display surface.
38. **Seasonal Sign** - Any sign that is temporarily displayed in correlation with a current season or occasion.

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39. **Tablet** - Any sign constructed of bronze, brass, stone, or other incombustible, permanent material which shall be permanently affixed or attached to the walls of a building or other structure and which bears the name of the owner, the name of the building, the date of erection of the building or contains reading matter commemorating a person or an event.
40. **Temporary Nonprofit Event Sign** - Any sign that advertises a one time non-profit, charitable, religious, or government sponsored event.
41. **Temporary Sign** - Any sign that has plastic film, paper, cloth or similar material and its associated message area that is designed to be fastened to a building or displayed behind a window and visible from outside a business building for a limited period of time.
42. **Traffic Sign** - Any sign which has been designated, established, and or erected by the federal, state or local government which directs, controls, or regulates the flow of vehicular or pedestrian traffic or identifies or locates, highways, streets, alleys, or any other public rights of way.
43. **Vehicle Sign** - Any sign that is attached to a vehicle.
44. **Wall Sign** - Any sign painted or attached parallel to the face of the building wall and confined therein and supported by such wall and displaying only one advertising surface.
45. **Warning Sign** - Any sign which warns of or indicates a dangerous, perilous or hazardous condition.
46. **Window Sign** - Any sign placed inside or upon a window facing the outside.



47. **Yard Sale Sign** - Any sign advertising the temporary sales of household items. Also known as garage or moving sales

**Single Family Residential** - Any development where:

1. No building contains more than one dwelling unit;
2. Every dwelling unit is on a separate lot; and
3. Where no lot contains more than one dwelling unit.

Also see the definition for Dwelling Unit.

**Site Plan** - A scaled site specific drawing prepared by a registered architect, licensed landscape architect, licensed land surveyor, licensed engineer, or professional planner showing the development plan for a project and containing all information required of site plans.

**Site Survey** - A map done by a surveyor accurately depicting the scale distances and measurements of all planned structures on a lot which may include topographical information and existing naturally occurring and constructed elements or structures, such as streams, wetlands, rock outcroppings, etc.

**Specified Sexual Activities** - Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or breast. (See Also Adult Entertainment/Establishments)

**Specified Anatomical Areas** - Less than completely and opaquely covered: human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernible turgid state, even if completely and opaquely covered.

**Story** - That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above that is habitable. Mezzanine in the front portion of the building is considered a habitable story for the purposes of this Code. Further, for Mixed Use Buildings, the habitable floor area of the second story shall be approximately equal to the habitable floor area of the first story.

**Story Above Grade** - Any story having its finished floor surface entirely above grade except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

1. More than six feet above grade plane;
2. More than six feet above the finished ground level for more than fifty percent of the total building perimeter; or
3. More than twelve feet above the finished ground level at any point.

**Street** - - A dedicated and accepted public right-of-way for vehicular and pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway; thoroughway, road, avenue, boulevard, land place or however otherwise designated.

1. **Alley** - A minor way used primarily for vehicular service access to the back or side or properties otherwise abutting on a street.
2. **Arterial Street** - A street used primarily for through traffic connecting major portions of the City.
3. **Collector Streets** - Those streets which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.
4. **Dead-End Street or Cul-de-sac** - A street whose entrance and exit is the same and which is used primarily for access to abutting properties.
5. **Hillside Street** - Any street where the average grade of land of the property to be subdivided is more than fifteen percent (15%).
6. **Marginal Access Streets** - Those streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.
7. **Minor Streets** - Those streets used primarily for access to abutting properties.

**Street, Private** - A street, alley or way that has not been accepted by the municipality or other governmental entity for public maintenance.

**Street Tree** - A tree planted along the street within the right-of-way except along an alley.

**Structure** - Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

**Subdivider** - Any individual, firm, association, syndicate, partnership, corporation, or any other legal entity commencing proceedings under the Subdivision Regulations to effect a subdivision of land hereunder for themselves or for another.

**Subdivision or Partition** - All divisions of a lot or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, lease, or building development (whether immediate or future) in accordance with Chapter 5 Subdivision Regulations of this Code Subdivision or the recombination of existing lots, tracts or parcels.

**Subdivision Regulations or "these Regulations"** [Section 7 of this Ordinance](#), as amended.

**Temporary Structures** - Buildings placed on a lot for a specific purpose which are to be removed within a specified time period and are placed on a non-permanent foundation.

**Thoroughfare** - See Street.

**Top of Bank** - The landward edge of the stream channel during high water, bank full conditions at the point where water begins to overflow onto the floodplain.

**Townhouses** - A single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

**Tract** - All contiguous land and water bodies under single or diverse ownership being developed as a unit consisting of one or more parcels or lots.

**Transitional Yard** - The area of a property running along the side or rear yard of a nonresidential lot when it abuts a residential lot used as a buffer. Transitional yards are planted with trees and landscaping to reduce noise, and other impacts on less intense property uses.



**Tree, Canopy** - A tree with a height at maturity greater than 30 feet and which produces significant shade due to the shape of the canopy tree.

**Tree, Small** - A tree with an expected height at maturity no greater than 30 feet.

**Two-Family Home** - See Duplex. Also see the definition for Dwelling Unit

**Unit of Government** - Any federal, state, regional, county, or municipal government or governmental agency

**Underpinning** - The skirting around the base of a manufactured home or temporary structure which forms a continuous wall around the structure from the foundation or grade level, to the base, or bottom floor level, of the structure. Underpinning material is prescribed by this ordinance.

**Utility** - A public or private distribution service to the public that it is regulated by the Public Service Commission of West Virginia .

**Use** - The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

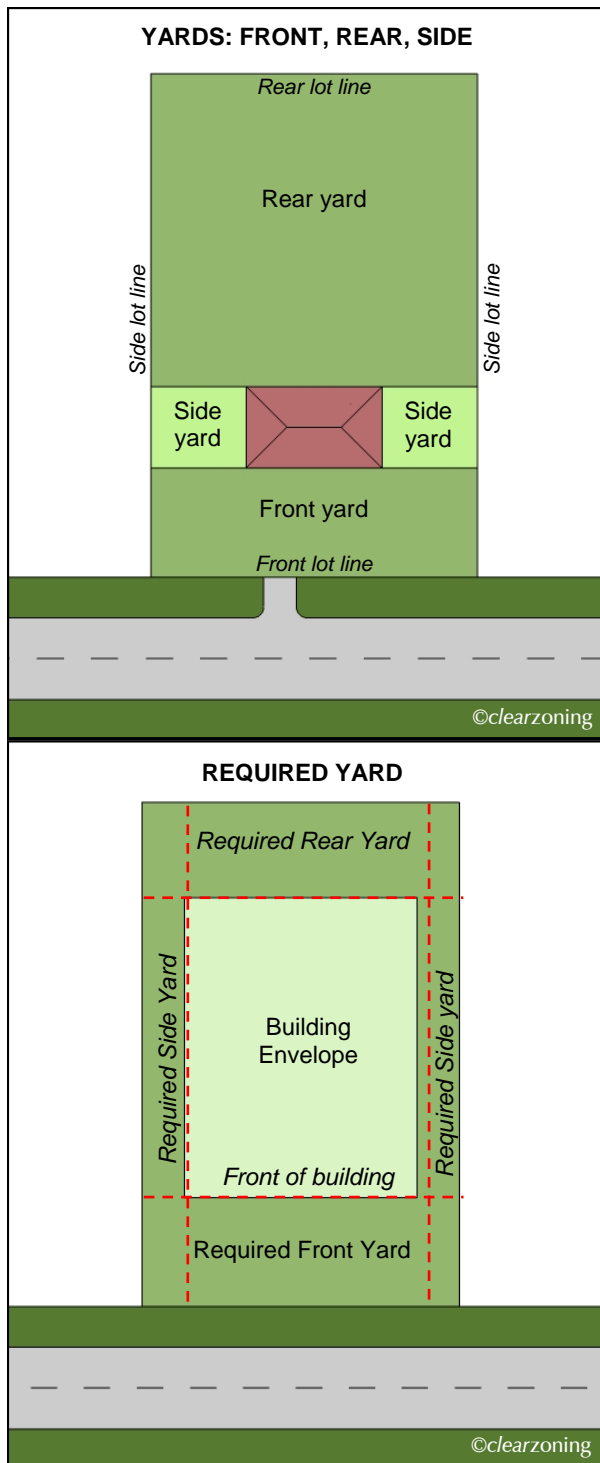
**Uses Permitted with Conditions** - This Ordinance lists all allowable uses by District. The allowable uses are split into 2 categories; uses permitted by right and uses permitted with conditions. The latter are provided with criteria that must be met in order for the use to be allowed within the district.

**Vested Property Right** - A right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the Planning Commission and is only applicable under the terms and conditions of the approved land development plan and plat specified in West Va. Code 8A-5-12 as amended. (Ord. 1510. Passed 12-14-10.)

**Vested Right** - The right to undertake and complete a development or use of property under the terms and conditions of an approved Site Plan or land development plan currently in effect or as otherwise allowed by law.

**Warehouse or Distribution** - The operation of a facility for the principal use of storing of goods, materials, trailers, cars not currently for sale, or boats or for the distribution of goods and materials to another location. This shall include structures or buildings associated with the operation of such principal use but does not include manufacturing, or industrial incidental storage of raw materials used by the business on-site or finished product of the business made on-site.

**Yard** - Open space that lays between the principal building or buildings and the nearest lot line. The minimum required yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this ordinance. Yards are further classified as front, rear, and side.



**Yard, Front** - A space extending the full width of the lot between the architectural front of a building and the front lot line or the fronting street right-of-way measured perpendicular to the building at the closest point to the front lot line. ✎

**Yard, Rear** - A space extending across the full width of the lot between the architectural rear of the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line. Rear yards extend from the back of a building to a property line. ✎

**Yard, Required** - The open space between a lot line and the yard line and the facade of a building within which no structure may be located except as permitted in this Ordinance. ✎

**Yard, Side** - A space extending from the front yard to the rear yard between the principal building facade and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building facade. ✎

**Zoning District** - See District.

**Zoning** - The division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

**Zoning Map** - A map that geographically illustrates all zoning neighborhoods, districts and corridors, and other designations within the City of Fairmont as described within the Zoning Ordinance and which is certified as the official land use map of the City of Fairmont, West Virginia.

**Zoning Ordinance or this Ordinance** - This Ordinance, passed May 28, 2015 and any amendments thereto.

**1** Purpose and Introduction

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**3** Zoning Districts

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# *Article 3.0*

## *Zoning Districts*





## Article 3.0 Zoning Districts

- 3.1 Districts Established
- 3.2 Map and Boundaries
- 3.3 Rules for Zoning Map Interpretation
- 3.4 Industrial Park Developments
- 3.5 Mobile Home Parks
- 3.6 Technology District

# 3.0 Zoning Districts

## 3.1 DISTRICTS ESTABLISHED

For the purpose of this Ordinance, the City of Fairmont is hereby divided into the following districts:

1. GR General Residential
2. NR Neighborhood Residential
3. NMU Neighborhood Mixed Use
4. CC City Center
5. MCC Main Corridor Commercial
6. HC Highway Commercial
7. I Industrial
8. MHN Manufactured Home Neighborhood
9. MHP Mobile Home Park
10. T Technology
11. EDU Education
12. Planned Development Area



**Digital User Note:**  
Click on a district heading to go directly to the corresponding district regulations.

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## 3.1.1

## GR General Residential

## A. INTENT

The General Residential district is coded to permit the development of lower density housing (typically a 6,000 square foot building lot or greater). Such development has traditionally been found in conventional subdivisions.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Single-Family Residence
- ii. Group Residential Facility
- iii. Group Residential Home

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Churches and other places of worship** § 4.8
- ii. **Cemetery** § 4.6
- iii. **Recreational Facility** § 4.30
- iv. School

## C. USES PERMITTED WITH CONDITIONS

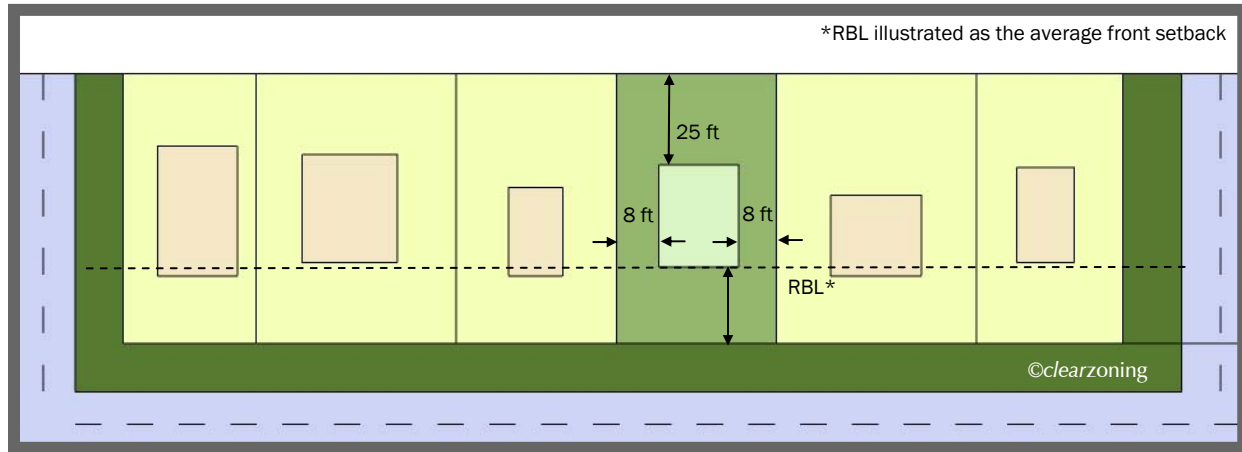
The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Essential Service, Class 1 & 2
- ii. **Home Occupation**, **Minor** § 4.17
- iii. **Garage Sale** § 4.15
- iv. **Portable Storage Container** § 4.29

## E. EXCLUSIONS

- i. All uses unless otherwise permitted above
- ii. Parking Lots, except as an accessory use to a use permitted with conditions or a conditional use

## F. DEVELOPMENT STANDARDS



### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback: Based on the established required building line (RBL) or 20 ft  
 Minimum rear yard setback: 25 ft  
 Minimum side yard setback: 10% of lot frontage or 8 feet, whichever is greater

#### Accessory Structure

Minimum rear yard setback: 5 ft\*  
 Minimum side yard setback: 5 ft

### Building Height

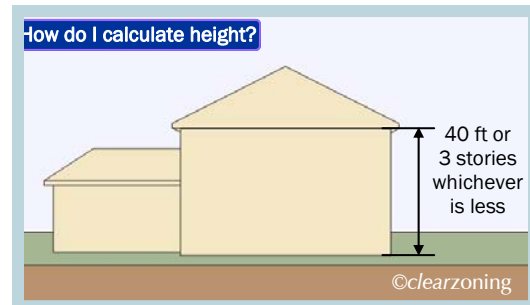
#### Principal Structure

Maximum structure height: 40 ft or three stories

#### Accessory Structure

Maximum structure height: 15 ft or one story

\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.



The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10
- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations



## 3.1.2

## NR Neighborhood Residential

## A. INTENT

The Neighborhood Residential district is coded to preserve the traditional building pattern of mixed residential development, which historically has been integrated to form a vibrant, active, and cohesive neighborhood unit.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Single-Family Residence
- ii. Group Residential Facility
- iii. Group Residential Home

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Civic Use** § 4.9
- ii. **Churches and other places of worship** § 4.8
- iii. **Country Club** § 4.12
- iv. **Libraries, Museums and Art Galleries** § 4.19
- v. **Multi-Family Residence** § 4.25
- vi. School
- vii. **Townhouse** § 4.25

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Essential Service, Class 1 & 2
- ii. **Home Occupation** § 4.17
- iii. **Duplex (Two-Family Homes)** § 4.25
- iv. **Bed & Breakfast Inn** § 4.5
- v. **Cemetery** § 4.6
- vi. **Child Care Home** § 4.7
- vii. **Garage Sale** § 4.15
- viii. **Portable Storage Containers** § 4.29
- ix. **Recreational Facility** § 4.30

## E. EXCLUSIONS

- i. All uses unless otherwise permitted above
- ii. Parking Lots, except as an accessory use to a use permitted with conditions or a conditional use.



## F. DEVELOPMENT STANDARDS

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback:	10 ft*
Maximum front yard setback:	25 ft
Minimum rear yard setback:	25 ft
Minimum side yard setback:	8 ft

#### Accessory Structure

Minimum rear yard setback:	5 ft**
Minimum side yard setback:	5 ft

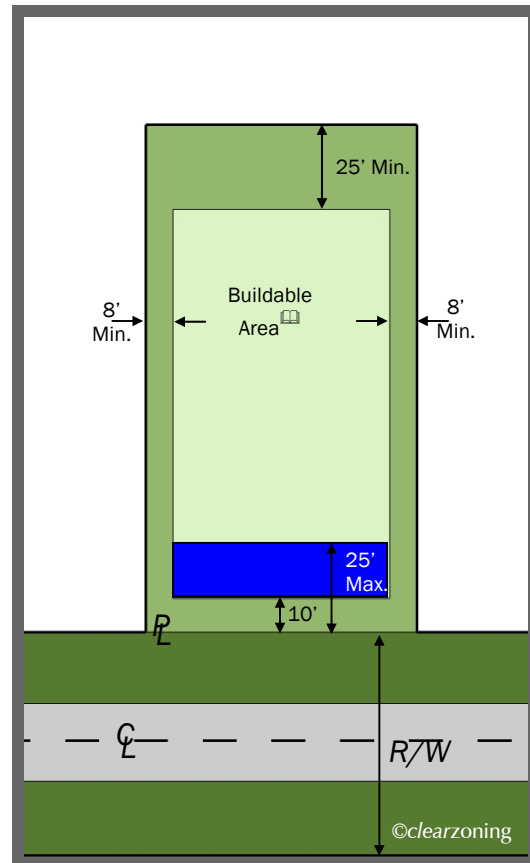
### Building Height

#### Principal Structure

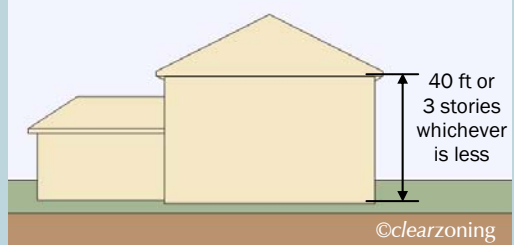
Maximum structure height:	40 ft or three stories
---------------------------	------------------------

#### Accessory Structure

Maximum structure height:	15 ft or one story
---------------------------	--------------------



#### How do I calculate height?



The above drawings are not to scale.

\* Encroachments: [See Section 5.7](#). Neighborhood Residential buildings may be based on the established required building line (RBL).

\*\* Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge..

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

### ■ Accessory Buildings and Structures § 5.10

- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations

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## 3.1.3

## NMU Neighborhood Mixed Use

## A. INTENT

The Neighborhood Mixed Use district is coded to provide pedestrian-scaled higher density residential homes and opportunities for limited scale commercial activities in existing mixed use areas and at the functional center of new neighborhoods. The architectural guidelines detailed in Section 5.2 are enumerated to permit the construction of various building types in close proximity to each other. In order to preserve the architectural heritage of the City of Fairmont, existing residential structures proposed for mixed use in these areas shall be preserved and adapted for re-use in lieu of new construction.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Residential
  - ii. Single-Family Residence
  - iii. Duplex
  - iv. Group Residential Facility
  - v. Group Residential Home
- ii. **Commercial, office, retail, or service use,** not to exceed 2,500 sq ft in area § 4.27.1
- iii. Restaurant

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Essential Service, Class 1 & 2
- ii. **Home Occupation** § 4.17
- iii. **Bed and Breakfast Inn** § 4.5
- iv. **Child Care Home** § 4.7
- v. **Townhome** § 4.25
- vi. **Mixed-Use Buildings** **and Live-Work Units** § 4.22
- vii. **Cemetery** § 4.6
- viii. **Civic Use** § 4.9
- ix. **Garage Sale** § 4.15
- x. **Portable Storage Container** § 4.29
- xi. **Temporary Use** § 4.34
- xii. **Existing Commercial Office, Retail, or Service Use,** exceeding 2,500 sq ft § 4.27.1

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Automotive Sales** § 4.3
- ii. **Multi-Family Residence** § 4.25
- iii. **Child Care Facility** § 4.7
- iv. **Convenience Store,** excluding fueling stations § 4.11
- v. **Institutional Use** § 4.14
- vi. **New Commercial Office, Retail, or Service use ,** not exceeding 5,000 sq ft § 4.27.1
- vii. **Recreational Facility** § 4.30
- viii. **Restaurant /Lounge** § 4.31

## E. EXCLUSIONS

- i. Adult establishment
- ii. Automotive / Boat /Heavy Equipment / Manufactured Home Repair, Sales & Service, including filling stations
- iii. Bars/Nightclub
- iv. Drive-Through Facility
- v. Gambling Facility
- vi. Light and Heavy Manufacturing Use
- vii. Limited Video Lottery
- viii. Highway Commercial Use (unless otherwise permitted herein)
- ix. Mining or Landfill Operation
- x. Mini-Storage
- xi. Outdoor Kennel
- xii. Outdoor storage or sales
- xiii. Warehousing and/or Storage necessitating truck travel (not including servicing of establishments located within the district).
- xiv. Uses which are not specifically enumerated or construed by the Planning Director to be compatible with this District.
- xv. Parking Lot, except as an accessory use to a permitted or conditional use.



## F. DEVELOPMENT STANDARDS

### Minimum Frontage Build-Out

Minimum: 60%\*

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback: 10 ft\*\*  
Maximum front yard setback: 25 ft\*\*\*  
Minimum rear yard setback: 40 ft  
Minimum side yard setback: 5 ft

#### Accessory Structure

Minimum rear yard setback: 5 ft\*\*\*\*  
Minimum side yard setback: 5 ft

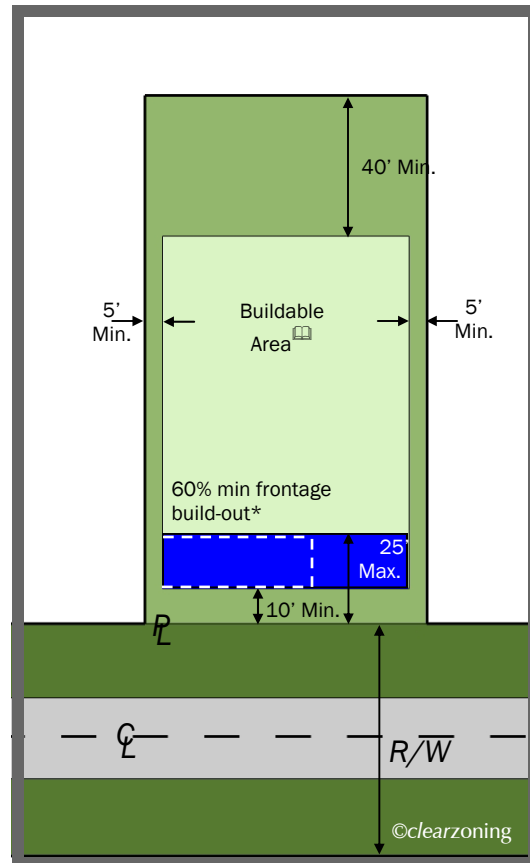
### Building Height

#### Principal Structure

Maximum structure height: 40 ft or three stories

#### Accessory Structure

Maximum structure height: 15 ft or one story

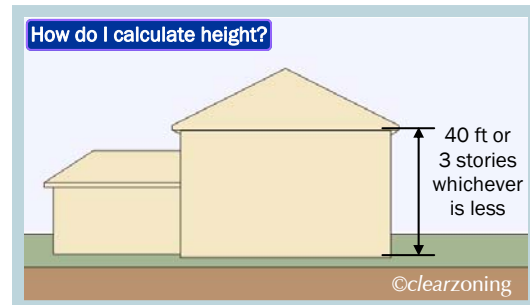


\*Frontage build-out may be accomplished with a minimum build-out of 50% with the remaining frontage line occupied by a wall or hedge not to exceed 4 feet in height.

\*\*Encroachments: see [Section 5.7](#).

\*\*\*Maximum setbacks for Neighborhood Mixed Use buildings may be based on the established required building line (RBL).

\*\*\*\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.



The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10
- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations

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## A. INTENT

The City Center district is coded to encourage the development and expansion of the City's traditional central business district and downtown historic district. This center is intended to serve as the civic, cultural, and governmental hub of activity for the entire City of Fairmont. The population density within walking distance of the City Center should be much higher than in other areas of the City. Minimum building heights are established along main corridors to ensure proper spatial definition and encourage strong pedestrian spaces. Transitions from Neighborhood Residential areas should be accomplished through architectural design and streetscape treatment. Individual buildings are encouraged to be mixed vertically with street level commercial and upper level residential. This area is supported by the continued development of a coherent street network constructed to support the traffic demands of both the auto and the pedestrian. Minimum parking requirements may be satisfied using on-street parking, shared rear-lot parking areas, or small scale parking lots adjacent to buildings.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Residential
  - a. Single-Family Residences
  - b. Duplexes (Two-Family Residence)
  - c. Townhouse
  - d. Multiple Family Residence
- ii. Mixed Use and Commercial
  - a. **Office**, **Retail**, or **Service Use** § 4.27.2
  - b. Group Residential Facility
  - c. Group Residential Home
  - d. Mixed Use Buildings and Live-Work Units
  - e. Restaurant

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Bed and Breakfast Inn** § 4.5
- ii. **Child Care Center** § 4.7
- iii. **Child Care Facility** § 4.7
- iv. **Child Care Home** § 4.7
- v. **Home Occupation** § 4.17
- vi. **Restaurant /Lounge** § 4.31
- vii. **Mobile Vending (Vehicle, Street, Sidewalk)** § 4.24
- viii. **Portable Storage Container** § 4.29
- ix. **Temporary Use** § 4.34

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Bars and Nightclubs** § 4.4
- ii. **Civic Use** § 4.9
- iii. **Convenience Store** § 4.11
- iv. **Drive-through facility** § 4.13
- v. **Entertainment Uses** § 4.14
- vi. **Full service hotel** exceeding three stories § 4.14
- vii. **Institutional Use** § 4.14
- viii. **Light Manufacturing** § 4.20
- ix. **Limited Video Lottery** § 4.21
- x. **New Office**, **Retail**, or **Service Use** exceeding 30,000 square feet § 4.10
- xi. **Recreational Facility** § 4.30

## E. EXCLUSIONS

- i. Adult Establishment
- ii. Automotive, Boat, Heavy Equipment, & Manufactured Home Repair/Sales/Service
- iii. Drive-Through Windows placed within the front or side of a building
- iv. Heavy Manufacturing Use
- v. Mining or Landfill Operation
- vi. Mini-storage Outdoor storage
- vii. Salvage
- viii. Recycling
- ix. Warehousing and/or Storage necessitating truck travel (not including servicing of establishments located within the district)
- x. Uses which are not specifically enumerated or construed by the Planning Department to be compatible with this District



## F. DEVELOPMENT STANDARDS

### Frontage Build-Out

Minimum: 75%\*

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback: 0 ft\*\*  
Maximum front setback: 10 ft  
Minimum rear yard setback: 15 ft\*\*\*  
Minimum side yard setback: 0 ft

#### Accessory Structure

Minimum rear yard setback: 5 ft\*\*\*\*  
Minimum side yard setback: 5 ft\*\*\*\*\*

### Building Height

#### Principal Structure

Minimum structure height: 26 ft or two stories  
Maximum structure height: 8 stories

#### Accessory Structure

Maximum building height: May not exceed the height of principle structure

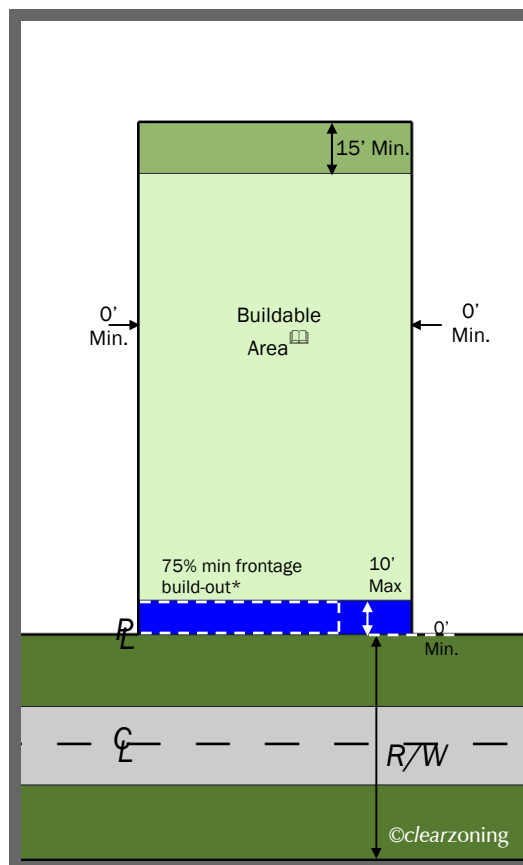
\*Frontage build-out may be accomplished with a minimum build-out of 50% with the remaining frontage line occupied by a wall or hedge not to exceed 4 feet in height.

\*\*Encroachment of 5 feet into the public right-of-way for street and patio dining is permitted subject to compliance with ADA requirements.

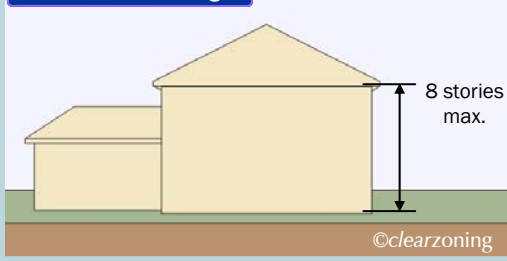
\*\*\*Exception: Buildings which abut alleys – 0 feet

\*\*\*\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.

\*\*\*\*\* Exception: Garages on separate lots that face alleys may be attached at the property line.



#### How do I calculate height?



The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10
- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations

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## A. INTENT

The Main Corridor Commercial district is coded to encourage the development of large-scale mixed-use districts that complement the surrounding neighborhoods and are supported by existing and planned transportation networks constructed to support the traffic demands of both the auto and the pedestrian. Main Corridor Commercial districts traditionally form near the convergence of large, coherent neighborhoods. The pedestrian can therefore walk to services and shopping within one of the Main Corridor Commercial centers within 10-15 minutes. Minimum building heights are established to ensure proper spatial definition, encourage strong pedestrian spaces, and promote mixed use within buildings. The Main Corridor Commercial center provides for the sale of general merchandise and limited office employment with neighborhood service areas of two to five miles. Higher densities of residential development are encouraged.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Residential
  - a. Single-Family Residence
  - b. Duplexes (Two-Family Residence)
  - c. Townhouse
  - d. Multiple Family Residence
- ii. Mixed Use and Commercial
  - a. Office, Retail, or Service, not exceeding 15,000 square feet in total floor area
  - b. Group Residential Facility
  - c. Group Residential Home
  - d. Home Occupation
  - e. Mixed Use Building and Live-Work Unit
  - f. Restaurant

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Bed and Breakfast Inn** § 4.5
- ii. Bus Shelters
- iii. **Child Care Center** § 4.7
- iv. **Child Care Facility** § 4.7
- v. **Child Care Home** § 4.7
- vi. **Drive-through facility** § 4.13
- vii. **Restaurant /Lounge** § 4.31
- viii. **Mobile Vending** § 4.24
- ix. **Portable Storage Container** § 4.29
- x. **Temporary Use** § 4.34

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Automobile repair, sales and service** § 4.3
- ii. **Cemetery** § 4.6
- iii. Civic Uses
- iv. **Convenience Store** / **Automobile Fueling Station** § 4.11
- v. **Country Club** § 4.12
- vi. **Entertainment Use** § 4.14
- vii. **Hotel/Motel/Inn** § 4.14
- viii. **Institutional Use** § 4.14
- ix. Office, Retail, or Service Use over 15,000 square feet up to 30,000 square feet total floor area
- x. **Recreational Facility** § 4.30

## E. EXCLUSIONS

- i. Adult Establishment
- ii. Bars and Nightclub
- iii. Boat, Heavy Equipment, & Manufactured Home Repair/Sales/Service
- iv. Gambling Facility
- v. Light Manufacturing Use
- vi. Limited Video Lottery
- vii. Heavy Manufacturing Use
- viii. Mining or Landfill Operation
- ix. Mini-Storage
- x. Outdoor Kennel
- xi. Recycling (indoor or outdoor)
- xii. Salvage Yard
- xiii. Warehousing and/or Storage necessitating truck travel (not including servicing of establishments located within the district)
- xiv. Uses which are not specifically enumerated or construed by the Planning Department to be compatible with this District



## F. DEVELOPMENT STANDARDS

### Frontage Build-Out

Minimum: 60%\*

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback: 0 ft\*\*  
Maximum front setback: 45 ft  
Minimum rear yard setback: 8 ft\*\*\*  
Minimum side yard setback: 5 ft

#### Accessory Structure

Minimum rear yard setback: 5 ft\*\*\*\*  
Minimum side yard setback: 5 ft

### Building Height

#### Principal Structure

Minimum structure height: 26 ft or two stories\*\*\*\*\*  
Maximum structure height: 40 ft or 3 stories \*\*\*\*\*

#### Accessory Structure

Maximum building height: May not exceed the height of principle structure

\*Frontage build-out may be accomplished with a minimum build-out of 50% with the remaining frontage line occupied by a wall or hedge not to exceed 4 feet in height.

\*\*Encroachment of 5 feet into the public right-of-way for street and patio dining is permitted subject to compliance with ADA requirements.

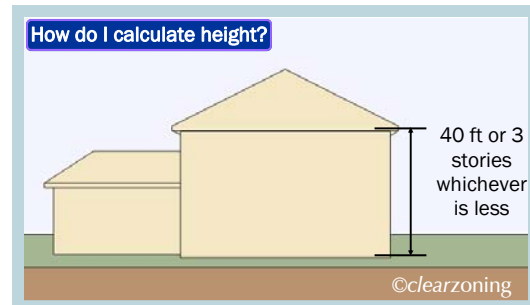
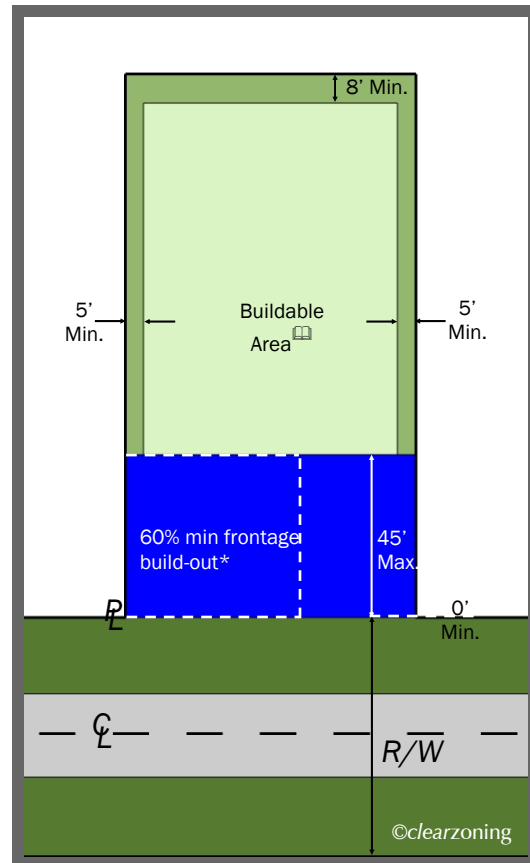
\*\*\*Exception: Buildings which abut alleys – 0 feet

\*\*\*\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.

\*\*\*\*\*May be reduced in accordance with [Section 5.2](#)

Architectural Requirements.

\*\*\*\*\*Buildings exceeding this height require a Conditional Use Permit.



The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10
- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations

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## A. INTENT

The Highway Commercial district is coded to provide for the location of auto-oriented and auto-dependent uses and/or those uses which have a definable market area which extends beyond the scale of the Neighborhood, Main Corridor Commercial or City Center. The intent of these provisions is to facilitate convenient access, minimize traffic congestion, and reduce visual clutter along certain designated areas in close proximity to Interstate 79.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Retail, Service, Office up to 30,000 square feet
- ii. Wholesaling up to 30,000 square feet
- iii. Essential Service Class 1 and 2
- iv. Group Residential Facility
- v. Group Residential Home
- vi. Home Occupation
- vii. Mixed Use Buildings and Live-Work Unit
- viii. Restaurant
- ix. Hotel

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Automotive / Boat / Heavy Equipment / Manufactured Home Sales and / or Service** § 4.3
- ii. **Bars and Nightclubs** § 4.4
- iii. Civic Use
- iv. **Commercial Use** exceeding 30,000 square feet in gross floor area § 4.10
- v. **Limited Video Lottery** § 4.21
- vi. Warehousing
- vii. **Telecommunication Facility** § 4.33
- viii. **Outdoor Storage** as an Accessory Use § 4.28

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Child Care Center** § 4.7
- ii. **Child Care Facility** § 4.7
- iii. **Child Care Home** § 4.7
- iv. **Drive-through facility** § 4.13
- v. **Restaurant/Lounge** § 4.31
- vi. **Temporary Use** § 4.34
- vii. **Portable Storage Container** § 4.29
- viii. **Mobile Vending** (**Vehicle, Street, and Sidewalk**) § 4.24

## E. EXCLUSIONS

- i. Adult Establishment
- ii. Gambling Facility
- iii. Mining and Landfill Operation
- iv. Mini-Storage
- v. Recycling
- vi. Salvage Yard
- vii. Storage of Hazardous Material
- viii. Outdoor Kennel
- ix. Uses that are not specifically enumerated or construed by the Planning Department to be compatible with this district



## F. DEVELOPMENT STANDARDS

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback:	25 ft
Minimum rear yard setback:	48 ft
Minimum side yard setback:	0 ft

#### Accessory Structure

Minimum rear yard setback:	5 ft*
Minimum side yard setback:	5 ft

#### Parking and Storage

Minimum front yard setback:	20 ft
Minimum rear yard setback:	20 ft
Minimum side yard setback:	20 ft

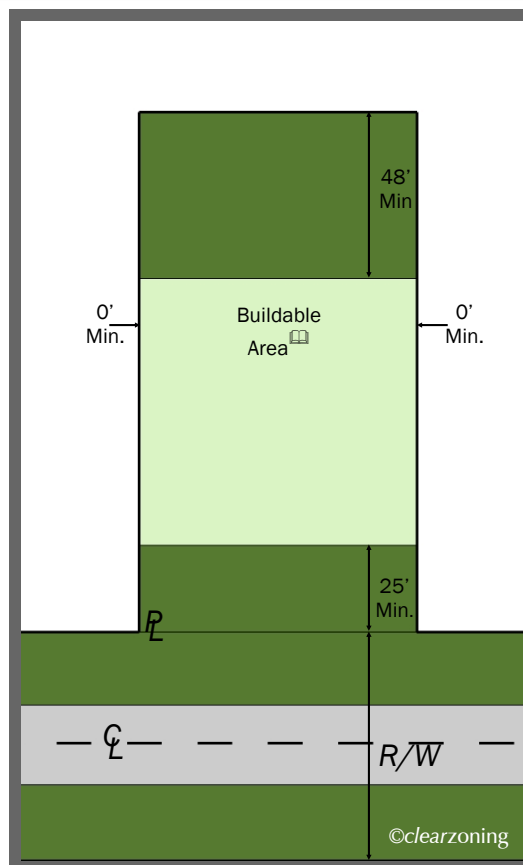
### Building Height

#### Principal Structure

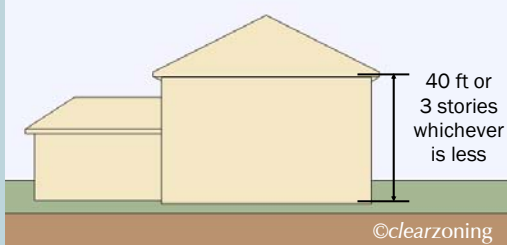
Maximum structure height:	40 ft or 3 stories **
---------------------------	-----------------------

#### Accessory Structure

Maximum building height:	May not exceed the height of principle structure
--------------------------	--



#### How do I calculate height?



\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.

\*\*Buildings exceeding this height require a Conditional Use Permit.

The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10
- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations

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enforcement



## A. INTENT

Industrial districts are coded to permit light and heavy industrial and manufacturing uses. Such developments are typically too large in scale to fit within a neighborhood environment and should be buffered from surrounding neighborhood uses.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Residential
  - a. Single-Family Residence
  - b. Duplex (Two-Family Residence)
  - c. Townhouse
  - d. Multiple-Family Dwelling
- ii. Mixed Use and Commercial
  - a. Office, Retail, or Service Use, not exceeding 30,000 square feet in total floor area
  - b. Group Residential Facility
  - c. Group Residential Home
  - d. Home Occupation
  - e. Mixed Use Buildings and Live-Work Units
  - f. Restaurant
  - g. Hotel
  - h. Distribution
  - i. Wholesale
  - j. Mini-Storage
  - k. Warehouse
- iii. Light Manufacturing
- iv. Essential Service, Class 1 and 2

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in [Section 4.16](#).

- i. Animal grooming and boarding service
- ii. **Child Care Center** § 4.7
- iii. **Child Care Facility** § 4.7
- iv. **Child Care Home** § 4.7
- v. **Outdoor Storage** as an accessory use § 4.28
- vi. **Restaurant/Lounge** § 4.31
- vii. **Portable Storage Container** § 4.29
- viii. **Temporary Uses** § 4.34
- ix. Transportation Service

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in [Section 4.16](#).

- i. **Adult Entertainment** § 4.2
- ii. **Telecommunication Facility** § 4.33
- iii. **Limited Video Lottery** § 4.21
- iv. **Institutional Use** § 4.14
- v. Outdoor Kennel
- vi. **Outdoor Storage** § 4.28
- vii. Heavy Manufacturing
- viii. Indoor Recycling

## E. EXCLUSIONS

- i. Uses which are not specifically enumerated or construed by the Planning Department to be compatible with this district



## F. DEVELOPMENT STANDARDS

### Setbacks

#### Principle Structure Setbacks\*

Minimum front yard setback:	20 ft
Minimum rear yard setback:	20 ft
Minimum side yard setback:	20 ft

#### Accessory Structure

Minimum rear yard setback:	5 ft**
Minimum side yard setback:	5 ft

#### Parking and Storage

Minimum front yard setback:	20 ft
Minimum rear yard setback:	20 ft
Minimum side yard setback:	20 ft

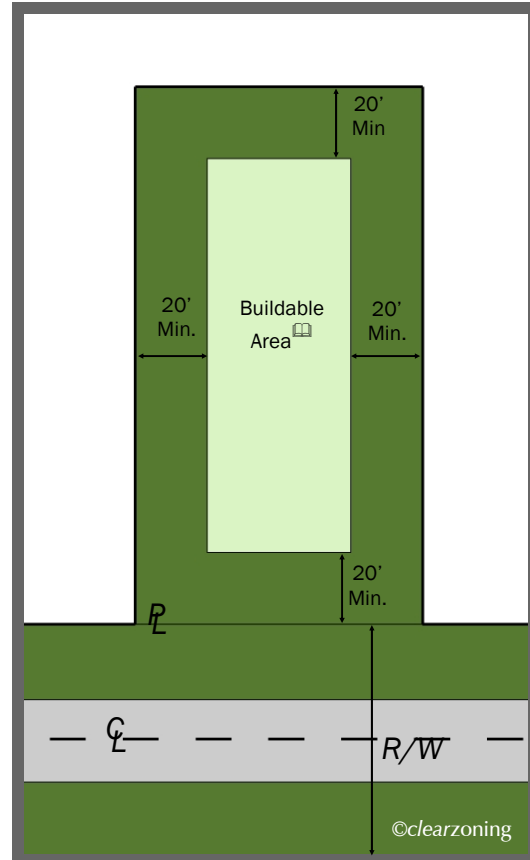
### Building Height

#### Principal Structure

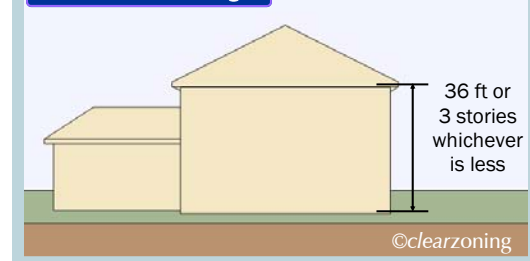
Maximum structure height:	36 ft or 3 stories ***
---------------------------	------------------------

#### Accessory Structure

Maximum building height:	May not exceed the height of principle structure
--------------------------	--



#### How do I calculate height?



The above drawings are not to scale.

\*For single family uses, the setbacks permitted within the NR district apply.

\*\*Exception: Garages with overhead doors facing alleyways shall be setback a minimum of 20 feet from the alley's pavement edge.

\*\*\*Development requiring greater building height is subject to Conditional Use review and approval.

## SELECTED REFERENCES

### 3. Zoning Districts

- [Industrial Park Developments](#) § 3.4

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10

- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations



### 3.1.8 MHN Manufactured Home Neighborhood

1 Purpose and Introduction

2 Definitions

3 Zoning Districts

4 Use Standards

5 Site Standards

6 Development Procedures

7 Subdivision Regulations

8 Admin & Enforcement

#### A. INTENT

Manufactured housing is a recognized form of affordable housing. The Manufactured Home Neighborhood (MHN) is coded to allow for the development of specific neighborhoods which utilize manufactured homes as the principal building construction methods. MHN can only occur in areas which are designated MHN on the City's land use map. By designating an area a MHN, the intent is to treat manufactured homes consistent with the provisions of West Virginia Code §8A-11-1; provided however, that manufactured homes shall be subject to the design considerations codified in this Ordinance.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

#### B. USES PERMITTED BY RIGHT

- i. Single Family Residence
- ii. Manufactured home
- iii. Essential Service, Class 1 & 2
- iv. Group Residential Home

#### D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Recreational Facility** § 4.30

#### C. USES PERMITTED WITH CONDITIONS

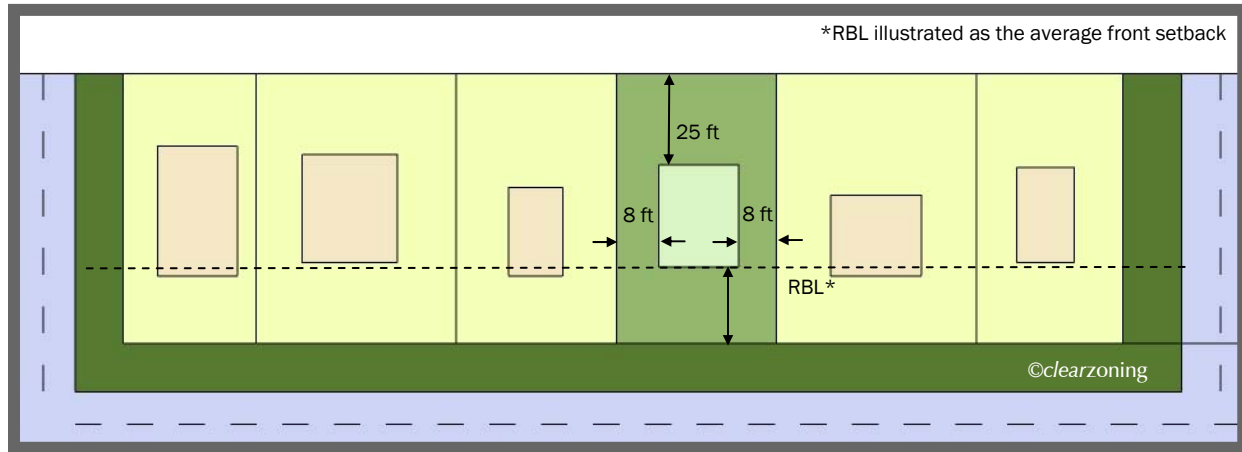
The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Duplex (Two Family Residence)
- ii. **Home Occupation**, **Minor** § 4.17



# MHN Manufactured Home Neighborhood 3.1.8

## E. DEVELOPMENT STANDARDS



### Minimum Development Standards

Minimum development size: 5 acres

Neighborhoods with 16 or more lots shall have at least two (2) entrances.

Individual homes shall be placed upon separately platted lots.

### Setbacks

#### Principle Structure Setbacks

Minimum front yard setback: Based on the established required building line (RBL) or 20 ft

Minimum rear yard setback: 25 ft

Minimum side yard setback: 10% of Lot Frontage or 8 feet, whichever is greater

Maximum front porch

Encroachment: 8 ft

#### Accessory Structure

Minimum rear yard setback: 5 ft

Minimum side yard setback: 5 ft

Minimum alley setback: 6 ft

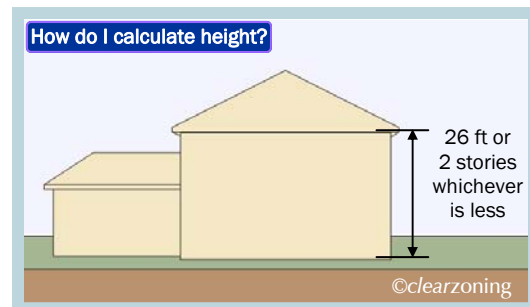
### Building Height

#### Principal Structure

Maximum structure height: 26 ft or two stories

#### Accessory Structure

Maximum structure height: 26 ft or two stories



The above drawings are not to scale.

## SELECTED REFERENCES

### 4. Use Standards

- **Uses Not Expressly Permitted or Conditional** § 4.36
- **Use and Parking of Recreational & Commercial Vehicles** § 4.35
- **Neighborhood Development Standards** § 4.26
- **Housekeeping Unit** § 4.18
- **Temporary Uses** § 4.34

### 5. Site Standards

- **Lot Standards** § 5.6
- **Encroachments** § 5.7
- **Lighting Requirements** § 5.1
- **Architectural Standards** § 5.2
- **Signs** § 5.3
- **Parking and Loading Requirements** § 5.4
- **Landscape Requirements** § 5.5
- **Fencing in Vegetative Screening** § 5.8

- **Accessory Buildings and Structures** § 5.10
- **Refuse Containment and Mechanical Equipment** § 5.9
- **Required Yard Use by Another Building** § 5.11

### 6. Development Procedures

- **Site Plan Review** § 6.1

### 7. Subdivision Regulations





## A. INTENT

In addition to other factory built homes, mobile homes are a recognized form of affordable housing. The Mobile Home Park (MHP) is coded to allow for the placement of mobile homes in specific locations designated for such use on the City's land use map.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Mobile Homes
- ii. Manufactured Home

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Mobile Home Parks** that provide spaces for more than 24 mobile homes § 4.23

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Essential Service, Class 1 & 2
- ii. **Home Occupation**, **Minor** § 4.17
- iii. **Garage Sale** § 4.15
- iv. **Portable Storage Container** § 4.29

## E. DEVELOPMENT STANDARDS

### Lot Size

Minimum lot size: 3,000 sq ft

### Limitation on Number of Mobile Home Spaces

Minimum number of spaces: 8

Maximum number of spaces: 23\*

### Setbacks

Minimum front yard setback: 20 ft

Minimum rear yard setback: 20 ft

Minimum side yard setback: 20 ft

Minimum to interior road setback: 20 ft

Minimum public ROW setback: 20 ft

Minimum to park boundary setback: 20 ft

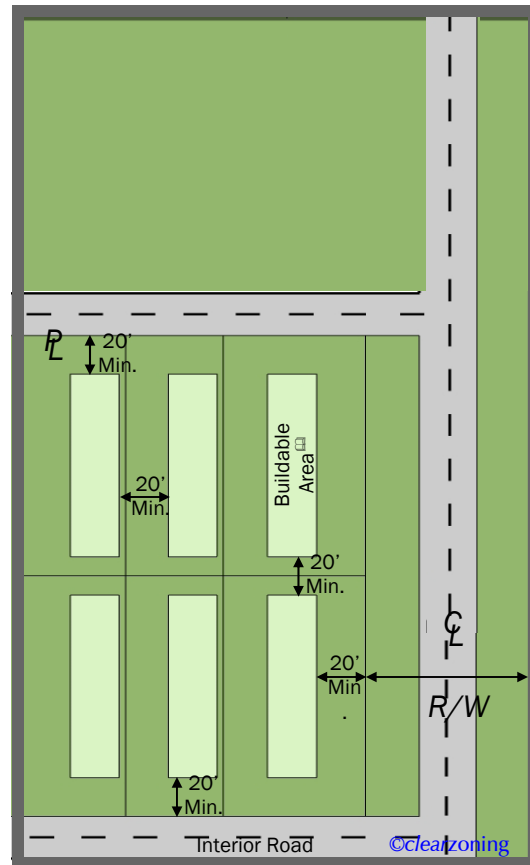
### Building Height

#### Principal Structure

Maximum structure height: One story

#### Accessory Structure

Maximum structure height: May not exceed the height of principle structure



\*24 mobile home spaces or more may be permitted only upon approval by the Board of Zoning Appeals as a conditional use.

## SELECTED REFERENCES

### 3. Zoning Districts

- [Mobile Home Parks](#) § 3.5

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
- [Lighting Requirements](#) § 5.1
- [Architectural Standards](#) § 5.2
- [Signs](#) § 5.3
- [Parking and Loading Requirements](#) § 5.4
- [Landscape Requirements](#) § 5.5
- [Fencing in Vegetative Screening](#) § 5.8

- [Accessory Buildings and Structures](#) § 5.10

- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations



## A. INTENT

The purpose and intent of these regulations are to provide a protective area for the orderly growth and development of certain industries and uses by the creation of a Technology District. The Technology district, by virtue of control, shall be mutually harmonious with other industries and uses permitted within the districts as well as with residential, commercial and other uses permitted in nearby districts. The Technology district caters to information technology and other similar high technology research and development industries requiring the benefits that accompany this zoning classification and protects these industries from encroachment by commercial, residential and other land uses adverse to the locations and expansion of such development.

1. These Technology district regulations are intended to promote the physical and mental health, safety, morals, welfare, comfort and convenience of the inhabitants of this district and its environs.
2. Within the Technology district as shown on the official Zoning or Land Use Map of the City of Fairmont, the regulations hereinafter established shall apply.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. Offices, Data Processing and other corporate-related functions.
- ii. High Technology Industries
- iii. Research and Development
- iv. Manufacturing, assembly, storage, and related uses
- v. Wholesale

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. **Hotel** § 4.14
- ii. **Restaurant/Lounge** § 4.31

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Reserved

## E. EXCLUSIONS

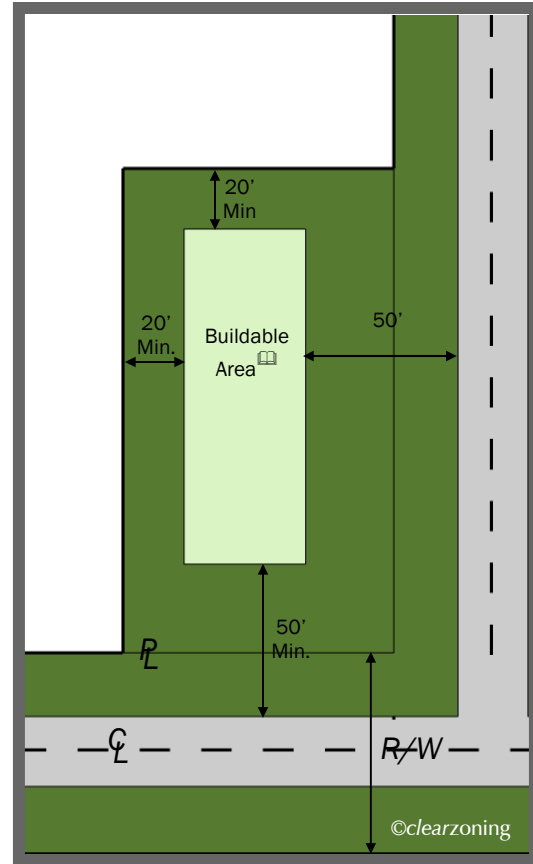
- i. Adult Entertainment
- ii. Motor Vehicle Sales
- iii. Gas Stations
- iv. Veterinary Clinics
- v. Churches
- vi. Residential Uses

## F. DEVELOPMENT STANDARDS

### Setbacks

- Minimum setback from street: 50 ft
- Minimum rear yard setback: 20 ft\*
- Minimum side yard setback: 20 ft \*

\* Unless in conflict with the minimum setback from street



The above drawing is not to scale.

## SELECTED REFERENCES

### 3. Zoning Districts

- [Technology District](#) § 3.6
- [Accessory Building and Uses](#) § 3.6.1

### 4. Use Standards

- [Uses Not Expressly Permitted or Conditional](#) § 4.36
- [Use and Parking of Recreational & Commercial Vehicles](#) § 4.35
- [Neighborhood Development Standards](#) § 4.26
- [Housekeeping Unit](#) § 4.18
- [Temporary Uses](#) § 4.34

### 5. Site Standards

- [Lot Standards](#) § 5.6
- [Encroachments](#) § 5.7
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- [Refuse Containment and Mechanical Equipment](#) § 5.9
- [Required Yard Use by Another Building](#) § 5.11

### 6. Development Procedures

- [Site Plan Review](#) § 6.1

### 7. Subdivision Regulations



## A. INTENT

The Education district is intended to identify the areas where primary and secondary educational facilities are located. In addition this district identifies the location of colleges, universities and other institutions of higher learning and defines the uses usually associated with them. Particularly the segregation of such facilities is appropriate given the unique characteristics of the areas, the variety of uses needed to serve these communities and the impacts of such land use in the City.



**User Note:** For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

## B. USES PERMITTED BY RIGHT

- i. All public primary and secondary educational facilities and related uses
- ii. The following uses for Institutions of higher learning; colleges and universities:
  - a. Facilities
  - b. **Retail and service establishments** § 4.27.4
  - c. Single family dwellings, multi unit and efficiency apartments
  - d. Public parks and public recreational facilities
  - e. Churches and similar places of worship.
  - f. Student Centers sponsored by organizations within the college, university or institution of higher learning
  - g. Municipal, county, state, and federal uses
  - h. Child day care centers
- iii. **Accessory Uses** § 4.1

## D. CONDITIONAL USES

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Reserved

## C. USES PERMITTED WITH CONDITIONS

The following uses must demonstrate they meet all of the requirement in **Section 4.16**.

- i. Reserved

## E. EXCLUSIONS

- i. Reserved

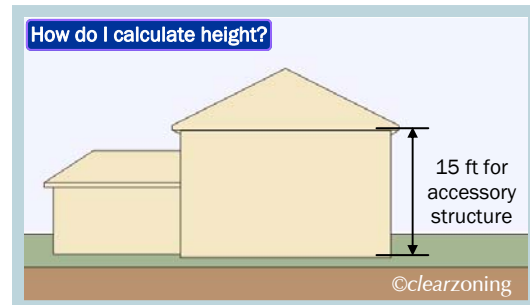
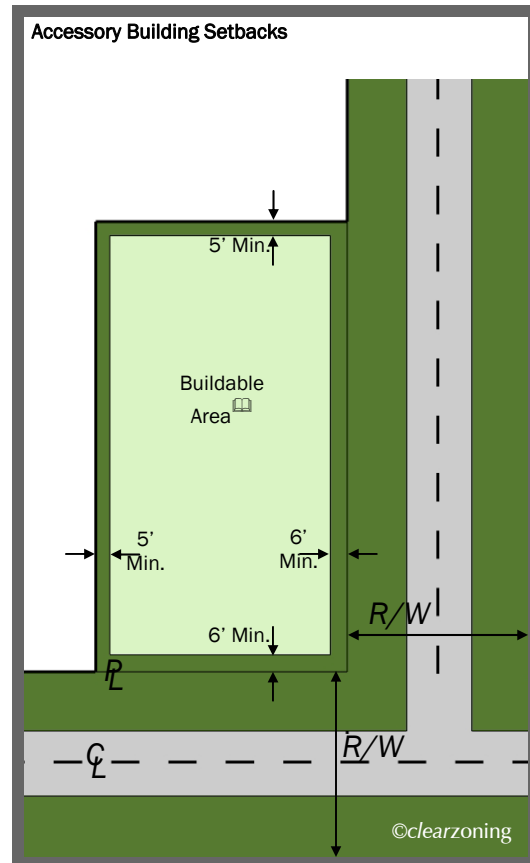
## F. DEVELOPMENT STANDARDS

**Setbacks**Accessory Structure

Minimum public ROW setback: 6 ft  
 Minimum rear yard setback: 5 ft  
 Minimum side yard setback: 5 ft

**Building Height**Accessory Structure

Maximum building height: 15 ft



The above drawings are not to scale.

## SELECTED REFERENCES

**4. Use Standards**

- **Uses Not Expressly Permitted or Conditional** § 4.36
- **Use and Parking of Recreational & Commercial Vehicles** § 4.35
- **Neighborhood Development Standards** § 4.26
- **Housekeeping Unit** § 4.18
- **Temporary Uses** § 4.34

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- **Landscape Requirements** § 5.5
- **Fencing in Vegetative Screening** § 5.8

■ **Accessory Buildings and Structures** § 5.10

- **Refuse Containment and Mechanical Equipment** § 5.9
- **Required Yard Use by Another Building** § 5.11

**6. Development Procedures**

- **Site Plan Review** § 6.1

**7. Subdivision Regulations**



# Planned Development Area

## A. PURPOSE AND INTENT

The purpose of the Planned Development Area (PDA) is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new developments; to provide and promote redevelopment and reuse opportunities; to encourage a harmonious and appropriate mixture of uses and/or housing types; to facilitate the adequate and economic provision of streets, utilities and city services; to preserve critical natural environmental and scenic features of the site; to encourage and provide a mechanism for arranging improvements and sites so as to preserve desirable features; and to mitigate the problems which may be presented by specific site conditions.

It is anticipated that a Planned Development Area will offer one or more of the following advantages:

1. Serve to implement the goals, objectives, and strategies of the City of Fairmont Comprehensive Plan, in general, and with specificity to the district or neighborhood in which the proposed PDA is to be located;
2. Apply the design principles of new urbanism, neo-traditionalism, and other emerging smart code principles, urban development patterns and best management practices;
3. Promote development patterns that maximize compatibility of differing adjacent land uses;
4. Enhance the appearance of neighborhoods by conserving areas of special natural beauty, steep slopes, ecological importance, flood prone areas, and natural green spaces where appropriate, while understanding that land within urban areas is best suited for urban densities and development patterns;
5. Counteract poor urban design and mitigate congestion on streets;
6. Promote architecture that is compatible with the vernacular examples of architecture common to the City of Fairmont and/or its surroundings;
7. Promote design principles that allow differing types of land uses to coexist while preserving property values and minimizing potential negative consequences;
8. Promote appropriate urban densities that will promote pedestrianism and which will help make alternative forms of transportation economically and socially feasible; and

9. Promote and protect the environmental integrity of the site and its surroundings by providing suitable design responses to the specific environmental constraints of the site and surrounding area.

## B. MINIMUM AREA AND SINGLE OWNERSHIP REQUIRED FOR A PLANNED UNIT DEVELOPMENT; EXCEPTION

A Planned Development Area shall consist of a parcel or tract of land comprising an area of at least four (4) acres. All land comprising the proposed Planned Development Area shall be titled in the name of a single owner; provided however, multiple ownership shall be permissible if each and every ownership interest is a co-applicant for the Planned Development Area designation and all ownership interests have executed a written agreement, in duplicate, in recordable form, the covenants of which shall run with the land and shall be binding upon any transferees, which shall identify one legal entity responsible for representing the application and which entity shall have authority to act as agent for all owners for all aspects of the Planned Development Area and the Planned Development Area process. An executed original agreement shall accompany the application for any Planned Development Area designation.

## C. GENERAL PROVISIONS

1. A Planned Development Area Outline Plan shall indicate all land uses, development standards, and all other applicable specifications which shall govern the Planned Development Area. If the Outline Plan is silent on a particular land use, a development standard, or any other applicable specification, the use, standard or specification established by the City of Fairmont Zoning Ordinance for the underlying district or any other applicable regulations shall apply.
2. Prior to any approval, a Planned Development Area map shall show the location and designation of all improvements. The location of a Planned Development Area shall be designated on the Official Land Use Map or Zoning Map for the City of Fairmont and shall be adopted pursuant to rules and regulations governing amendments of this Zoning Ordinance.



# Planned Development Area

3.1.12

3. The Planned Development Area must comply with all required improvements, construction standards, design standards, and all other engineering standards adopted and enforced by the City of Fairmont, and any other pertinent regulations, except where specifically varied through the provisions of this section of the Zoning Ordinance.
4. Designation and Conveyance or Ownership of Permanent Open Space.
  - A. Designation. Within all Planned Development Areas, a minimum of ten (10) percent of the land of the proposed Planned Development Area shall be designated as permanent open space. No plan for a single-family or multi-family residential Planned Development Area shall be approved unless such plan provides for permanent landscaped or natural open space.
  - B. Proximity.
    - i. In the case of a mixed-use Planned Development Area, permanent open space shall be allocated to the property in proportion to the uses assigned to the Planned Development Area and shall be located within reasonable proximity (within one-quarter of a mile) to those uses. Provided, however, the permanent open space need not be located in proximity to the use in the case of preservation of existing features.
    - ii. As an alternative, a payment in lieu of the open space provision may be made to the City for the purchase or provision of permanent open space on a separate parcel within one quarter of a mile of any Planned Development Area.
  - C. Proportion. If the Outline Plan provides for the Planned Development Area to be constructed in stages, open space must be provided for each stage of the Planned Development Area in proportion to that stage.
  - D. Conveyance. Permanent open space shall be owned by or conveyed to one of the following:
    - i. To a municipal or public corporation;
    - ii. To a nonprofit corporation or entity established for the purpose of benefiting the owners and tenants of the Planned Development Area or, where appropriate and where approved by the Municipal Planning Commission and the City Council, adjoining property owners, or both. All conveyances hereunder shall be structured to insure that the grantee has the obligation and the right to affect maintenance and improvement of the common open space; and that such duty of maintenance and improvement is enforced by the owners and tenants of the Planned Development Area and, where applicable, by adjoining property owners;
    - iii. To owners other than those specified in subsections 3.1.12.4D.i. and ii. above, and subject to restrictive covenants describing and guaranteeing the open space and its maintenance and improvement, running with the land for the benefit of residents of the Planned Development Area or adjoining property owners, or both; or
    - iv. Included in single-family residential lots under the individual control of lot owners.
5. Uses permitted in a Planned Development Area may be any use that is found in the Zoning Ordinance in any district, subject to the approval of the City of Fairmont Planning Commission and City Council; however, the City reserves the right to require that a PDA shall consist of only residential uses when circumstances warrant. Examples of such circumstances may include, but are not limited to:
  - A. Significant infrastructure constraints that could cause practical difficulties in supporting nonresidential uses;
  - B. The character and land use pattern of surrounding neighborhoods; or
  - C. Possible deleterious changes in traffic circulation patterns in the immediate area.

A developer may also initiate a request to limit his or her Planned Development Area to residential uses.

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# Planned Development Area

6. For purposes of determining overall project size, two or more parcels of land owned or controlled by the applicant that are wholly or partially separated by a public street or other right-of-way may be considered contiguous and thus may be counted in fulfilling the minimum acreage requirement of a Planned Development Area, provided that the use and development of the public street or other right of way is incorporated into, and is an integral part of the project plans; and provided that there is no other property not owned by the applicant separating the parcels in question. Where there is uncertainty in determining a parcel's qualification to be included in the Planned Development Area, the Planning Commission shall resolve the issue and make a determination as to the project boundaries, after considering the advice of the Planning Director and the request by the applicant.

## D PROCEDURE FOR APPROVAL OF PLANNED DEVELOPMENT AREA

Applications for a Planned Development Area shall be accompanied by all plans, descriptions, narratives, documents, and exhibits required by subsection E hereof. A three-step application process shall be used. The steps in the process are:

- Pre-application Conference;
  - Outline Plan Approval; and
  - Development Plan Approval.
1. Pre-application Conference. Prior to filing a formal application for approval for a Planned Development Area, the applicant shall schedule a pre-application conference with the Planning Department. The purposes of the pre-application conference shall be to:
- A. Allow the applicant to present a general concept and to discuss characteristics of the development concept in relation to adopted municipal plans and policies;
  - B. Allow the Planning Department to inform the applicant of pertinent policies, standards, procedures and recommendations for the Planned Development Area; and
  - C. The pre-application conference is intended only for the above purposes; neither the developer nor the City of Fairmont is bound by any decision made during a pre-application conference.

## 2. Outline Plan Approval.

- A. Based upon the pre-application conference, the applicant shall develop and submit an Outline Plan for the proposed Planned Development Area.
- B. The Outline Plan and application for the Planned Development Area shall be submitted to the Planning Department, and the Director, who, after certifying the application package to be complete, shall initiate a review of the proposed development.
- C. The application and the results of the review shall then be forwarded to the Planning Commission for its consideration, public hearing and recommendations together with the Planning Department's report and such other documents as may be pertinent to the Planned Development Area.
- D. The Planning Commission shall hold a special public meeting in the district where the proposed Planned Development Area project is located. If the project crosses district boundaries, the meeting shall be held in the district where the majority of the property is located. The hearing shall be conducted at least seven (7) days prior to the regularly scheduled Planning Commission meeting at which the formal public hearing will be held. The Planning Department will place a Class I advertisement in the newspaper specifying the time and location of the special public meeting, at least five (5) days prior to meeting.
- E. Where there are environmentally sensitive features on the site or the subsequent Development Plan is expected to be complex, or there are other important planning implications involved, the Planning Commission may reserve the right to review the subsequent Development Plan. Where the Planning Commission recommends denial of an Outline Plan and the City Council approves the plan, the Planning Commission shall review the subsequent Development Plan.

# Planned Development Area

3.1.12

- F. Upon completion of its review, the Planning Commission shall forward the application to the City Council with
  - i. A favorable recommendation,
  - ii. An unfavorable recommendation, or
  - iii. No recommendation.
- G. Effect of Approval of Outline Plan:
  - i. When an Outline Plan for a Planned Development Area has been approved by the City Council, by Ordinance, the Plan shall become effective and its location shall be shown on the Zoning Map or Land Use Map. The Zoning Map or Land Use Map shall be amended to designate the site as a Planned Development Area (PDA).
  - ii. Upon such amendment of the Zoning Map or Land Use Map, the use and development of the site shall be governed by the Planned Development Area Outline Plan, subject to approval of a subsequent Development Plan.
  - iii. Notwithstanding approval of an Outline Plan no permit of any kind shall be issued until the Development Plan has been approved.
- 3. Development Plan Approval:
  - A. Purpose of Development Plan Approval. The purpose of the Development Plan is to designate the controls for development of the Planned Development Area. The Development Plan shall show the exact location of each building and improvement to be constructed and a designation of the specific internal use or range of uses for each building.
  - B. Time Limit for Approval of Development Plan. The Development Plan shall be submitted to the Planning Department not more than eighteen (18) months following City Council approval of the Outline Plan. The Outline and Development Plans may be submitted as a single plan if all requirements of [Section 3.1.12](#) are satisfied. The Development Plan may be submitted and approved in stages, with each stage representing a portion of the Outline Plan, at the discretion of the Municipal Planning Commission. The time

limit for submitting each stage for approval may be set forth in the Outline Plan, in which case that schedule shall control the timing of development, rather than the time period contained in this paragraph. The City of Fairmont Planning Commission may extend the time for application for approval of the Development Plan for good cause, consistent with the purposes of the Zoning Ordinance.

- C. Expiration of Time Limit. Periodically, the Planning Director shall report to the City of Fairmont Planning Commission on Planned Development Areas with expired time limits. The original applicants or current developers of the Planned Development Area shall be notified by the Planning Director. The Municipal Planning Commission shall determine whether to consider extending the time or to initiate action to amend the Land Use Map to rescind the Planned Development Area designation.
- D. Relationship of Development and Outline Plan. The Development Plan shall conform to the Outline Plan as approved.
- E. Procedure for Approval of a Development Plan: The applicant must have the Development Plan approved prior to issuance of any building permit.
  - i. Development Plan Submission. The Development Plan and supporting data shall be filed with the planning staff.
  - ii. Review. The Planning Director shall review the Development Plan to include site plan review, in accordance with the requirements of the Zoning Ordinance.
  - iii. Staff Approval. It shall generally be the responsibility of staff to review Development Plans unless the City of Fairmont Planning Commission reviews the Development Plans, or where no Development Plan is required.

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iv. City of Fairmont Planning Commission Review. If the Planning Commission has retained Development Plan approval authority, the Planning Commission shall hold a public hearing in accordance with its rules and regulations for amendments. The Commission may approve, deny or approve with modifications.

F. Expiration of Development Plan. The Development Plan shall expire 2 years after approval, unless grading and/or building permits have been obtained and are still current and valid on that date. This rule shall also apply to each stage of a Development Plan approved in stages. The applicant may request, in writing, an extension of time, and the approving authority may extend the time limit where deemed appropriate. Such extension may be considered at the time of Development Plan approval.

G. Effect of Approval of Development Plan. No permit of any kind shall be issued for any purpose within a Planned Development Area except in accordance with the approved Development Plan, and after acceptance by the City of Fairmont of all required guarantees for improvement.

#### E. PRE-APPLICATION CONFERENCE, OUTLINE PLAN AND DEVELOPMENT PLAN REQUIREMENTS

Planned Development Area plans and supporting data shall include all documentation listed in this Section of the Code unless certain documentation is deemed superfluous by the Planning Director due to the specific circumstances of the particular request.

##### 1. Pre-application Conference Requirements:

- A. A written letter of intent from the applicant describing the applicant's intention for developing the site;
- B. A preliminary scaled drawing of the site depicting the proposed location and extent of the land uses, major streets, and the approximate location of any existing easements, natural features, and topographic or geologic constraints;

##### 2. Outline Plan Requirements.

- A. A drawing of the proposed Planned Development Area shall be prepared at scale not less than 1" = 50'-0", or as considered appropriated by the Planning Director, and shall show in concept major circulation; generalized location and dimensions of buildings, structures, and parking areas; open space areas, recreation facilities, and other details to indicate the character of the proposed development. The submission shall include:
  - i. A site location map;
  - ii. Map data such as north point, scale and date of preparation;
  - iii. The name of the proposed development, with the words "Outline Plan" in the title block;
  - iv. Boundary lines and acreage of each land use component;
  - v. Existing easements and rights-of-way, including location, width and purpose;
  - vi. Existing land use on abutting and adjacent properties;
  - vii. Other conditions on adjoining land: topography (at 2-foot contour intervals) including any embankments or retaining walls; use and location of major buildings, railroads, power lines, towers and other influences; name of any adjoining subdivision plat;
  - viii. Existing streets on and adjacent to the tract, including street name, right-of-way width, walks, curbs, gutters, culverts and drainage ways;
  - ix. Proposed public improvements: streets and other major improvements planned by the public for future construction on or adjacent to the tract;
  - x. Existing utilities on the tract;
  - xi. Any land on the tract within FIRM Zone A; and/or A-E (the 100-year floodplain) and/or floodway.

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- xii. Other conditions on the tract, including water courses, wetlands, sinkholes, wooded areas, isolated trees six (6) inches or more in diameter, existing structures and other significant features;
  - xiii. Existing vegetation to be preserved and the locations, nature, and purpose of proposed landscaping;
  - xiv. A master plan for types, quantities and maximum square footage allotments for all signs proposed to be placed within the development, including illustrations of proposed sign types;
- B. Miscellaneous: The Planning Director shall inform the applicant of any additional documents or data requirements necessary for Outline Plan approval after the Pre-application Conference. The developer must submit 20 copies of any page of any portion of the plan that exceeds 11 inches by 17 inches in size. If fewer copies than required are submitted, the Planning Director may deem the application to be incomplete and shall not schedule hearing dates until the situation is resolved.
- C. Written Statement of Character of the Planned Development Area: An explanation of the character of the Planned Development Area and the reasons why it has been planned to take advantage of the flexibility of these regulations. The written statement shall include:
- i. Objectives. A specific explanation of how the proposed Planned Development Area meets the objectives of all adopted land use policies which affect the land in question.
  - ii. Ownership. A statement of present and proposed ownership of all land within the project including the beneficial owners of a land trust.
  - iii. Scheduling. Timing of proposed development indicating:
    - a. Stages in which the project will be built, including the area, density, use, public facilities, and open space to be developed with each stage. Each stage of development shall be described and mapped; and
    - b. Projected dates for beginning and completion of each stage of land development.
  - iv. Proposed Uses.
    - a. Residential Uses: type, gross area, architectural concepts (narrative or representative illustration), number of units, bedroom breakdown, and proposed occupancy limits for each residential component; and
    - b. Nonresidential Uses (for any mixed use PDA): specific nonresidential uses, including gross floor areas (GFA), architectural concepts (narrative or representative illustration), and building heights.
  - v. Facilities Plan. Preliminary concepts and feasibility reports for:
    - a. Streets, roadways and bikeways;
    - b. Sidewalks and pedestrian pathways;
    - c. Water supply system;
    - d. Sanitary sewers;
    - e. Stormwater management;
    - f. Public utilities;
    - g. Streetscaping, furniture and lighting
    - h. Landscaping
  - vi. Traffic Analysis. The Planning Director or the City of Fairmont Planning Commission, shall require a study of the traffic impact caused by the proposed Planned Development Area and/or any measures proposed to mitigate that impact. Such study shall be conducted by a licensed traffic or transportation engineer.

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3. Development Plan Requirements. The application for Development Plan approval shall include, but shall not be limited to, the following documents:
  - A. Such additional information as may have been required by the Outline Plan approval;
  - B. An accurate map exhibit of the entire phase for which Development Plan approval is being requested, showing the following:
    - i. Precise location of all buildings to be constructed, and a designation of the specific use or range of uses for each building. Single-family residential development on individual lots need not show precise locations of buildings on each lot, but plans shall show building setback lines and other design constraints;
    - ii. Design and precise location of all streets, sidewalks, curbs, drives, and parking areas, including construction details, street lighting, traffic control devices, signage, centerline elevations, pavement type, pavement design, curbs, gutters, culverts details and any other information required by the City Engineer;
    - iii. Location of all public utility lines and easements, both proposed and existing;
    - iv. A final detailed landscape plan. Tabulation on each separate subdivided use area, including land area, number of buildings, number of dwelling units per acre, type of unit, bedroom breakdown, and limits on occupancy;
    - v. Stormwater management plans including stormwater calculations, location and size of storm lines (both existing and proposed), detention/retention facilities with construction details. Stormwater management plans are to conform to local, state and federal regulations; and
    - vi. Sediment and erosion control plans per local, state and federal regulations.
  - C. If lands to be subdivided are included in the Planned Development Area, a subdivision plat meeting the requirements of a preliminary plat, as modified by the Outline Plan approval, is required where platting is to be proposed concurrent with the Development Plan review and approval process.
  - D. Projected construction schedule.
  - E. Agreements and covenants which govern the use, maintenance, and continued protection of the Planned Development Area and its common spaces, shared facilities, and private roads.
  - F. Guarantee of Performance for Completion of Improvements. A performance bond with corporate surety or other guarantee acceptable to the City of Fairmont shall be provided for all proposed public improvements and shall be executed at time of permit application or platting, whichever comes first. Improvements that must be guaranteed include facilities that shall become public, and may include other facilities or improvements as may be specified in the Outline or Development Plan approval. If the project is to be built in phases, the bond or guarantee shall be posted prior to the commencement of work on each phase. The bond or guarantee shall specify the time for completion of improvements, and shall be in an amount of one hundred twenty-five percent (125%) of the estimated verifiable cost of the improvements, as determined by the project contractor or engineer, and as approved by the City Engineer.

## F. REVIEW CONSIDERATIONS

In considering a Planned Development Area Outline Plan, the Planning Director in his report to the City of Fairmont Planning Commission, the Planning Commission in its recommendation to City Council, and the City Council in its decision, shall evaluate the project in light of as many of the following objectives as may be relevant to the specific proposal:

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1. The extent to which the Planned Development Area meets the purposes of the Zoning Ordinance, the Comprehensive Plan, and any other adopted planning objectives of the City of Fairmont;
2. The extent to which the proposed plan meets the requirements, standards, and stated purpose of the Planned Development Area regulations;
3. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to, the density, dimension, bulk, use, required improvements, and construction and design standards and the reasons why such departures are or are not deemed to be in the public interest;
4. The proposal will not be injurious to the public health, safety, and general welfare;
5. The physical design of the Planned Development Area and the extent to which it makes adequate provision for public services, provides adequate control over vehicular traffic and promotes alternative forms of transportation, provides for and protects designated permanent open space, and furthers the amenities of urban ambience, light and air, recreation and visual enjoyment;
6. The relationship and compatibility of the proposed plan to the adjacent properties and neighborhood, and whether the proposed plan would substantially interfere with the use or diminish the value of adjacent properties and neighborhoods;
7. The desirability of the proposed plan to the City of Fairmont's physical development, tax base and economic well-being. At the discretion of the Planning Commission and City Council, special consideration in the form of increased development flexibility may be given to projects that are intended to rehabilitate or replace dilapidated areas, brownfields, or other areas of general visual or economic blight. Such special consideration shall not be granted to projects intended for construction on lands that consist of sixty percent (60%) or more of greenfield or previously undeveloped lands.
8. The proposal will not cause undue traffic congestion, and can be adequately served by existing or programmed public facilities and services.
9. The proposal preserves significant ecological, natural, historical, and architectural resources to the extent possible.
10. The proposal will enhance the appearance, image, function, and economic sustainability of the community at large.
11. Projects which are designed to a more human scale, support multi-modal transportation options, promote pedestrianism, reserve useful open space, provide significant amenities to residents, and incorporate architectural detailing, massing and scale that is consistent with historical community norms shall have a significant advantage in the review process over those that merely seek to maximize inappropriate forms of density, circumvent customary development standards, or promote a pattern of development that can be generally recognized as "urban sprawl," as defined in the definition section of the Zoning Ordinance. Projects that fail to achieve these objectives will likely result in a recommendation for denial by the Planning Department and/or Planning Commission.
12. The proposal makes reasonable accommodations in housing, recreational amenities, and pedestrian facilities for individuals with disabilities.
13. The proposal dedicates and provides a percentage of the total number of dwelling units to be offered at sale or rental prices deemed affordable to individuals of low and moderate income, as defined by the U.S. Department of Housing and Urban development. Generally, between three to five percent (3% - 5%) of all units should meet this goal.
14. For any PDA containing only residential uses, clustering of units should be utilized (and may be required by the City) in order to preserve meaningful open space and/or recreational amenities for the residents. In addition, such projects shall be required to provide a mixture of different dwelling types and sizes. Examples of dwelling types include townhouses, row houses, patio homes, zero lot line houses, single-family detached housing, apartments, duplexes, condominiums, etc.

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## G. CHANGES IN THE APPROVED PLANNED DEVELOPMENT AREA

1. Changes Requiring Outline Plan Approval. Changes which alter the concept or intent of the Planned Development Area including but not limited to:
  - A. Significant increases in density;
  - B. Significant changes in the proportion or allocation of land uses;
  - C. Change in the list of approved uses;
  - D. Changes in the locations of uses;
  - E. Changes in functional uses of open space, where such change constitutes an intensification of use of the open space; and/or
  - F. Changes in the final governing agreements where such changes conflict with the approved Outline Plan.
2. Changes Requiring Development Plan Approval. These changes shall include the following:
  - A. Changes in lot arrangement, or addition of buildable lots that change approved density of the development;
  - B. Changes in site design requirements, such as location of required landscaping, signage, building height, architectural character, cube and/or footprint, or other such requirements of the Zoning Ordinance;
  - C. Changes to the internal street system or off-street parking areas;
  - D. Changes in drainage management structures;
  - E. Changes in access to the development site, where such change amounts to an intensification in the traffic patterns of roadways of classification higher than local; and/or
  - F. All other changes not expressly addressed under subsection (h)(1) hereof shall require new Development Plan approval.

### 3.2 MAP AND BOUNDARIES

The neighborhood, district, and corridor boundaries, overlay districts, and other elements of zoning established by this ordinance shall be reflected upon and shown on an electronic map or plat maintained by the City of Fairmont entitled or referred to as Zoning Map, City of Fairmont, West Virginia, duly approved \_\_\_\_\_. The electronic map required by this ordinance shall be from time to time modified to reflect all subsequent amendments to this ordinance and all changes in the boundaries of any neighborhood, district or corridor or other zoning element which is adopted by the governing body by ordinance. Said map, as amended, shall be available for inspection by the public at all times.

### 3.3 RULES FOR ZONING MAP INTERPRETATION

The following rules shall apply in the interpretation of neighborhood, corridor, district or overlay boundaries and the location of centers shown on the zoning map:

1. Boundaries delineating the centerline of streets, highways, or alleys shall follow such centerlines.
2. Boundaries delineating lot lines shall follow such lot lines.
3. Boundaries delineating the Corporate Limits shall follow such Corporate Limits.
4. Boundaries indicated as following railroad lines shall be midway between the main tracks.
5. Boundaries indicated as following a river or stream shall be mid stream unless otherwise indicated on the zoning map.
6. Boundaries shown parallel to or extensions of features indicated in this Section shall be construed as such. Distances not specifically indicated on the zoning map shall be determined by the scale of the map.
7. Centers shown at the intersection of streets shall be at the intersection of the street centerlines.
8. Centers shown at parks or other civic spaces shall be at the center of such areas.
9. Where a boundary line divides a lot in single ownership, the rules, requirements and regulations of this ordinance applicable to the most restrictive portion of the lot shall be construed as extending to the entire lot.

10. Where the actual location of existing physical or natural features vary with those shown on the zoning map, or in other circumstances not covered by this Section, the Planning Commission shall be vested with the authority to interpret and determine the boundaries.

11. Whenever any street, alley or public way is vacated, any applicable boundary shall be automatically extended to the center of such vacation and all areas included in the vacation shall then and henceforth be subject to all applicable rules, regulations and requirements.

12. Any area shown on the map as a park, playground, school, cemetery, waterway, right of way or any other public or semipublic use, shall be subject to all applicable rules, regulations and requirements of the neighborhood, district, overlay or corridor in which it is situated.

### 3.4 INDUSTRIAL PARK DEVELOPMENTS

1. Because of the significant impacts certain interior Industrial district uses have on the community in size and/or use, such interior uses shall be permitted only upon review of a Master Plan by the Planning Commission and approval of City Council in accordance with the procedure outlined in [Section 3.1.12](#). Individual sites with uses permitted by right may be approved administratively in accordance with the approved Master Plan.
2. Platting provisions for new developments.
  - A. Internal setbacks shall be set during the review process.
  - B. A coherent, interconnecting network of internal public streets shall be designed to accommodate the various uses found within the district.
  - C. Sidewalks shall be constructed along the main streets within the district to provide internal users pedestrian access to external environs.
  - D. Lots and buildings shall be designed so as to establish quadrangles within the District.
3. Building placement.
  - A. Minimum District Size for New Development: 5 Acres
  - B. Minimum District Setbacks: All Perimeter Yards: 80 feet



- C. Minimum Interior Lot Size: Lot size may be determined by use and shall be decided upon during the development review process.
- 4. General provisions.
  - A. All buildings shall front on internal streets.
  - B. Internal front setbacks shall be designed to create steady and even frontage lines.
  - C. Parking areas and private driveways may not encroach into setbacks that abut external public streets. Internal public streets may encroach into setbacks that do not abut public external streets or residential uses up to 40 feet.
  - D. External streets shall be screened in accordance with the Master Plan at the discretion of the Planning Commission.

### 3.5 MOBILE HOME PARKS

1. No mobile home or accessory building shall be located within twenty feet of another mobile home or within twenty feet of a private road/street within the park;
2. No mobile home or accessory building shall be located within twenty feet of a park boundary line or a public right of way;
3. At least two paved off-street parking spaces are available for each mobile home space;
4. A buffer area (See [Section 5.5 Landscaping Requirements](#)) shall be provided around the perimeter of the mobile home park;
5. All private mobile home park roadways are paved with a permanent all weather surface, such as concrete or asphalt or other material approved by the Planning Department and shall be constructed in compliance with the West Virginia Division of Highway's Standards for Highway Construction and maintained by the owner of the mobile home park;
6. The mobile home park owner shall assume responsibility for all refuse collection;
7. Illumination for internal streets shall be provided and maintained by the owner of the mobile home park;
8. Each mobile home must be tied down and have underpinning in accordance with applicable building code;
9. Two hundred square feet of common recreation area shall be provided for each mobile home space. No portion of the minimum lot requirement shall constitute **or** be used to satisfy any portion of this requirement.

10. Fire protection facilities and water supply for fire protection shall be provided to the satisfaction of the Fire Chief.
11. Accessory storage buildings and other similar structures shall be set or constructed in the rear or side yard only;
12. Satellite dishes may not exceed 2 feet in diameter.
13. Front yard fences shall not exceed 4 feet in height and shall be constructed of split rail, wooden picket, properly screened chain link, or other material as determined by the Building Inspector which will not present or create a solid visual obstruction. Side and rear yard fences shall not exceed 4 feet in height. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.
14. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, and pump covers may be placed in any yard. Notwithstanding any other provisions of this section to the contrary, doghouses and dog related structures shall be placed in rear or side yards only.
15. Trash containers and mechanical equipment shall be located in the side or rear yard.
16. Mobile Home Parks with more than 16 lots shall have at least two (2) entrances.
17. Individual homes shall be placed upon separately platted lots.

### 3.6 TECHNOLOGY DISTRICT

1. Accessory Buildings and Uses. Within any Technology district, the following accessory buildings and uses shall be permitted only to the extent and as an incident to a permitted use for the district:
  - A. Any structure which is incidental to the primary use including, but not limited to, warehouses and storage buildings, provided that no such accessory structure shall be greater than twenty percent (20%) of the total building area occupied by the primary use.
  - B. Recreational facilities, dining facilities, fitness centers, day care centers, and other employee amenity services in connection with the operation of a permitted use and primarily for employees, students or faculty.



- C. Retail sales and consumer service establishments (not including wholesale sales), dealing primarily with employees, students and faculty of permitted uses, provided that such retail or consumer uses shall not occupy more than five percent (5%) of the total floor area of any building on any lot or group of contiguous lots in common ownership or control.
2. Performance Standards. Within any Technology district, the following performance standards shall be applicable to and shall be required for all uses located in the Technology district.
- A. Air Pollution. Manufacturing processes emitting odor, dust, fumes, smoke or other pollutants shall confine such pollutants so as not to create a nuisance to adjacent properties and any such discharge shall conform to all federal, state and/or local regulations and standards.
- B. Vibration. Except in temporary instances during site construction work, the maximum permitted vibration from any cause shall not exceed the following, when measured at the lot line:

3.6.2.B Maximum Permitted Vibrations	
Frequency (Cycles per second) 0008	Displacement Inches
10 and below	.0008
10 - 20	.0005
20 - 30	.0003
30 - 40	.0002
40 - 50	.0001
50 and above	.0001

- C. Radiation. Research operation shall cause no dangerous radiation at any property line and shall conform to all federal, state and/or local regulations and standards.
- D. Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air or water, and the disposal of radioactive wastes shall conform to all federal, state, and/or local regulations and standards.

- E. Electromagnetic Interference. Industries shall emit only that amount of unshielded spurious electromagnetic radiation as is necessary for the conduct of their operations. Federal. Communications Commission requirements shall govern maximum radiation which tends to interfere with meaningful signals and all such emissions shall conform to all federal, state, and/or local regulations and standards.
- F. Water Pollution. No effluent shall be discharged into any stream. Discharge into the City of Fairmont sewer system shall be as approved by the City Engineer and the Director of Public Works and shall conform to all federal, state, and/or local regulations and standards.
- G. Industrial Waste. All industrial waste shall be treated and disposed of in such a manner as to comply with all federal, state, and/or local regulations and standards.
3. Regulation of Improvements. Within any Technology district, the following regulations shall be applicable to and shall be required for all uses, improvements, buildings and structures located in the Technology district:
- A. General. No improvement shall be commenced, erected, constructed, altered or maintained upon any lot nor shall any change or alteration thereon or thereof be made, nor any subdivision, plat, or replat be made unless and until the plans, specifications, and locations shall have been submitted to and approved by the City of Fairmont.
- B. Drainage and Erosion Control. Every lot and/or individual development within the District must conform to the requirements of a site and drainage plan, which must be pre-approved by the appropriate regulatory agencies, as well as the City Engineer and the Director of Public Works.
- C. Excavation and Site Grading. No excavation or grading shall be permitted except in connection with the construction of an improvement, and upon completion thereof, exposed openings shall be backfilled, graded and leveled. No excavation or grading shall occur until all the requirements of this Code and in particular Article 917 have been fulfilled.



- D. **Site Furniture.** Site furniture and mechanical equipment visible from a street shall be considered as landscape elements and all site furniture shall be in accordance with City Code.
- E. **Curb Cuts.** It is intended that curb cuts be minimized and designed in accordance with West Virginia Department of Highways and City of Fairmont specifications, including the requirements of this Code and in particular Article 917, and approved by the Director of Public Works.
- F. **Off-Street Parking.** No parking shall be permitted on any street, lawn, median strip, public walkway, swell, berm, or other unpaved area or at any place other than on the paved parking spaces provided for and described herein below. Each owner and tenant of the district shall be responsible for compliance with the foregoing by his employees and visitors. Off-street parking shall be provided by each owner and tenant for employees, customers and visitors. The location, number and size of parking spaces shall be in accordance with [Section 5.4](#).
- H. All off-street parking, access drives, and loading areas shall be paved and properly graded to assure proper drainage. Overnight parking of campers, mobile homes, boats, trailers, or motor homes is prohibited. If parking requirements increase as a result of the change in use or the number of employees, additional off-street parking shall be provided as determined by the City of Fairmont.
- I. **Loading, Service, and Outside Storage.** Each lot devoted to development shall provide sufficient on-site loading facilities to accommodate site activities. All loading movement, including turnabouts, shall be made off of the public right-of-way. Loading docks shall be located and screened so as to minimize their visibility from any street or other right-of-way. Screening of service areas, loading docks, and so forth may consist of any approved combination of earth mounding, landscaping, walls and/or fencing. All screened materials, supplies and equipment shall be permitted to remain outside of any building. Tanks, motors and special technological equipment will be permitted to remain outside of any building so long as they are screened from the street and surrounding property. Rubbish and garbage facilities shall be screened so as not to be visible from any street or right-of-way. All screening shall meet the requirements as prescribed in [Section 5.5.4](#).
- J. **Utility Connections.** All utility connections, including all gas docks, propane tanks, electrical, and telegraph connections and installations of wires to buildings shall be designed and installed in accordance with the appropriate regulatory code.
- K. **Exterior and Interior Lighting.** Exterior lighting on all building sites shall be limited to signs and security and safety illumination of streets or roadways, parking lots, access drives and walks, building entrances, loading areas, and service areas and exterior lighting of overall building surfaces. No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building. Pole mounted exterior fixtures shall be limited to a maximum height of thirty (30) feet unless approved by the Building Inspector.

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# *Article 4.0*

## *Use Standards*



## Article 4.0 Use Standards

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# 4.0 Use Standards

## 4.1 ACCESSORY USES

Accessory structures and uses shall be permitted in the Education district provided they meet the following conditions:

1. The structure or use is customarily and clearly incidental and subordinate to the principal use.
2. The structure shall not be used for living or sleeping quarters.

## 4.2 ADULT ESTABLISHMENTS

1. No such adult establishment shall be located less than 1,000 feet from a school, place of worship, library, day care center, civic building, park, historic district, lot in residential use, lot with residential districting, or other adult establishment as measured from door to front door along the curb line of public streets providing access;
2. All doors, windows, and other apertures shall be located and covered or screened in with opaque glazing to discourage and prevent visibility or viewing of the interior;
3. The maximum floor area of each use shall be 1500 square feet; and
4. No exterior signage, building element, advertisement, display or other promotional material shall be pornographic in nature or convey any such idea or element or relate to specified anatomical areas, as defined in [Section 2.2](#), and shall not be visible from a public right of way or pedestrian walk.

## 4.3 AUTOMOTIVE/BOAT/HEAVY EQUIPMENT/FACTORY BUILT HOMES, REPAIR, SALES, AND/ OR SERVICE

1. Automotive sales and limited service which is clearly ancillary to the auto sale use in the Neighborhood Mixed Use district may be permitted for passenger vehicles only. Large equipment, factory built homes and recreational boats sales or service uses are not permitted within this district. Uses shall be subject to the following conditions:
  - A. Buildings shall be oriented to the front of the lot facing the main street;

- B. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont. Large curb cuts providing little to no defined driveway access shall be prohibited. Driveways shall be designed so as to provide the minimum interference with the residential nature of the street;
  - C. Outdoor storage areas shall be located within the side or rear yards and screened from adjacent properties with fencing or with a landscape buffer area;
  - D. Outdoor lighting shall be limited to a maximum height for wall or pole mounted lighting of eighteen (18) feet. All fixtures must be full cut-off fixtures and shielded from adjacent residential properties.
  - E. Outdoor sales areas must be setback a minimum of ten (10) feet from the property line and screened with an appropriate landscape treatment; and
  - F. Exterior noise shall be a factor in determining the appropriateness of this use. All potential adverse noises shall be mitigated as required by the Board of Zoning Appeals.
2. Automotive repair, sales and service in the Main Corridor Commercial district shall be subject to the following conditions:
    - A. Buildings shall be oriented to the front of the lot facing the main street;
    - B. Outdoor sales areas must be setback a minimum of ten (10) feet from the property line and screened with a Type B landscape treatment.
    - C. Exterior noise shall be a factor in determining the appropriateness of this use. All potential adverse noises shall be mitigated as required by the Board of Zoning Appeals;
    - D. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the planning director;
    - E. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties;
    - F. For automobile sales, there shall be a minimum of 6,000 square feet of outdoor display area; and

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- G. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont.
- 3. Automotive, boat, heavy equipment and factory built home sales and service in the Highway Commercial shall be subject to the following conditions:
  - A. Large surface parking lots should be visually and functionally segmented into several smaller lots. The size of any single surface parking lot shall be limited to three (3) acres, unless divided by a street, principal building, or Type A Opaque Screen/Buffer;
  - B. No outdoor public address system shall be permitted which can be heard beyond the boundaries of the property; and
  - C. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont.

#### 4.4 BARS AND NIGHTCLUBS

- 1. The total number of such establishments in concurrent operation within any zoning district where permitted cannot exceed ten (10).
- 2. No two of such uses shall be located within 500 feet of each other measured front door to front door along the curb line of the public streets providing access.
- 3. The gross square footage of floor area to customer ratio shall be one (1) customer for every fifty (50) square feet of floor area. Floor area shall include the area dedicated for customer service and storage area.
- 4. Plans and specifications for exterior design, interior layout, service area and signage must be submitted for review at the time of the application for a Conditional Use Permit and shall comply with all district regulations, including any architectural requirements of this Code; and with the West Virginia Alcohol Beverage Control Administration. Violations and enforcement actions on record at the Alcohol Beverage Control Administration will be considered by the Board of Zoning Appeals.
- 5. Any approval granted by the Board of Zoning Appeals shall be contingent upon the safe and orderly operation of a bar that does not cause a nuisance or hazard to the area.

- 6. The Board may consider evidence of public nuisance as determined by the City of Fairmont Police Department or City Manager at a duly advertised public hearing to review the Conditional Use Permit, which may be revoked if the Board finds the above conditions are not being met.

#### 4.5 BED & BREAKFAST INNS

- 1. Single family homes used as bed and breakfast inns shall have a minimum heated floor area of 2,500 square feet and shall meet the definition of a bed and breakfast outlined in [Section 2.2](#).
- 2. Single family homes used as bed and breakfast inns may not subdivide existing rooms into less than 200 square feet.
- 3. The bed and breakfast inn shall be owner-occupied.
- 4. The structure shall be virtually indistinguishable from the surrounding houses.
- 5. Meals shall be served to overnight guest only.
- 6. Cooking facilities within bedrooms is prohibited.
- 7. Parking shall be provided using on street parking, if available, or off-street parking within the rear of the home. One space per guestroom and one per employee must be provided.
- 8. Not more than two identification signs with a total area of two (2) square feet may be used. Signs shall not be internally illuminated.
- 9. All bed and breakfast inns shall comply with the provisions of West Virginia Code 29-3-16c Safety Standards for Bed and Breakfast Establishments.
- 10. Employment may not exceed two (2) full time employees not including the owner.

#### 4.6 CEMETERY

- 1. Brick or stone walls between one and one-half (1.5) and four (4.0) feet are permitted.
- 2. Wood or wrought iron fences between two (2.0) and eight (8.0) feet are permitted.
- 3. Setbacks from all street right of way and adjacent properties to a wall or grave shall be a minimum of eight (8) feet.
- 4. One sign per road frontage may be permitted. Sign size is based on one (1) square foot of sign per linear foot of road frontage to a maximum of forty (40) square feet per frontage.

5. Access to the site must be provided using paved driveways clearly defined and designed so as not to interfere with the residential character of the neighborhood.
6. Off street parking areas must be paved and screened from view using a Type B screen type.

#### 4.7 CHILD CARE BUSINESSES

1. Center/Child Care Facility
  - A. All child care providers, be they state or privately operated, shall obtain a license from the WV Secretary of State and the DHHR. Each facility shall also be inspected by the City Building Inspector and Fire Marshal to ensure the safety of both children and employees.
  - B. A center shall provide a minimum of thirty-five (35) square feet of useable indoor space per child and any rooms and/or areas that have not been approved for the use of children shall be made inaccessible. No activity space may be created in the basement of a structure unless expressly approved by the Fire Marshal.
  - C. An outdoor activity area must be provided by the center allowing a minimum of seventy-five (75) square feet of space per child. Should the minimum space not be available, a rotating outdoor activity schedule shall be established to meet the minimum requirements and ensure that each child be afforded outdoor playtime every day.
  - D. The outdoor activity area noted above shall be located in the rear yard or side yard and must be fenced. Fences shall be a minimum of six (6) feet in height. Parks may be used to meet outdoor activity requirements if located immediately adjacent to the facility.
  - E. All play equipment shall be located in the fenced area. Front yards shall not be used as playground areas.
  - F. Decorative fencing or a vinyl coated chain link fence screened with landscaping shall be provided when the fence is visible from the street.

2. Child Care Home.
  - A. All child care providers, be they state or privately operated, shall obtain a license from the WV Secretary of State and the DHHR. Each facility shall also be inspected by the City Building Inspector and Fire Marshal to ensure the safety of both children and employees.
  - B. There shall be no outdoor advertising or signage permitted for a child care home.
  - C. All child care homes shall be considered a home occupation and are subject to the rules and regulations as stated in [Section 4.17](#).
  - D. A child care home is not permitted to have additional parking beyond the normal requirements of a residential district.

#### 4.8 CHURCHES AND OTHER PLACES OF WORSHIP

1. An existing residential structure converted to a church or place of worship shall:
  - A. Retain its residential character, appearance and driveway;
  - B. Is permitted one (1) sign. Sign size is permitted based on the linear frontage of the property at a ratio of one (1) square foot of sign size for every linear frontage of property to a maximum of forty (40) square feet.
  - C. Not create off street parking out of any portion of the required front, side or rear yard setbacks. Any allowable parking shall be situate towards the interior of the lot and shall be paved.
  - D. Not provide for any significant alteration to the exterior of the structure.
2. New construction shall:
  - A. Not interfere with the quiet use and enjoyment of the neighboring properties as a result of noise, light, or increased traffic;
  - B. Parking must be screened using a Type B screen type;
  - C. Exterior lighting is limited to eighteen (18) feet in height and must be full cut-off fixtures oriented away from adjacent residential lots;
  - D. Building height shall be as permitted for residential buildings within the district.

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**4.9 CIVIC USES**

1. Building(s) incidental to the principal structure shall be behind a line a minimum of twenty (20) feet from the front facade of the structure, and if more than one, shall be arranged to create secondary gathering spaces within the lot.
2. Parking shall be located towards the interior of the lot. Parking may not occur within a front setback or corner side setback.
3. Front setbacks may be altered to preserve views or significant trees.
4. Civic use development over three (3) acres shall provide ninety (90) percent of the parking on-site.

**4.10 COMMERCIAL USES EXCEEDING 30,000 SQUARE FEET**

1. Uses generating an additional 8,000 or more car trips a day shall be required to improve adjoining street or intersection infrastructure as determined by the City and/or West Virginia Division of Highways.
2. Parking shall be to the rear and the side of any building or structure.
3. Significant trees and stands of trees within the required setbacks shall be preserved.
4. Front setbacks may be altered (increased) to preserve significant trees and stands of trees.

**4.11 CONVENIENCE STORES<sup>1</sup>/AUTOMOBILE FUELING STATION**

1. Hours of operation shall be restricted to 6:00 a.m. to 11:00 p.m.;
2. Shall be oriented to the front of the lot facing the main street;
3. Gasoline pump and parking within the City Center district shall be located in the rear or side yards;
4. No outdoor display of merchandise or products shall be permitted;
5. Lighting shall be full cut off fixtures and oriented away from surrounding residential uses; and
6. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties.

**4.12 COUNTRY CLUB<sup>1</sup>**

1. A country club building shall form a central gathering place for a neighborhood.
2. Parking shall be to the rear and/or side of the building(s).
3. The principal building shall face the fronting street and shall not be setback a distance that inhibits pedestrian access.

**4.13 DRIVE-THROUGH<sup>1</sup> FACILITIES**

1. Drive-through windows must be located within the side or rear of the building and shall be limited to one (1) lane. Acknowledging industry trends, two (2) menu boards may be permitted if they are accessed with a single queue lane.
2. Uses in the City Center district with side-loaded drive-through windows are not permitted. Only rear loaded drive through windows may be permitted.
3. Vehicle storage for drive-through window uses shall be located outside of and physically separated from the right-of-way of any street. This area shall not interfere with the efficient internal circulation of traffic on the site, adjacent property, or adjacent street right-of-way.
4. Drive-through window facilities shall be screened from off-site view from a street right of way by a Type B buffer with a minimum width of five (5) feet.

**4.14 FULL SERVICE HOTELS<sup>1</sup> IN EXCESS OF THREE STORIES: MOTELS/HOTELS/INNS, INSTITUTIONAL USES, ENTERTAINMENT USES<sup>1</sup>**

1. Shall be oriented to the front of the lot facing the main street;
2. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties, as determined by the Planning Commission;
3. Noise shall be of such a nature so as not to interfere with the quiet use and enjoyment of surrounding properties. Additional information regarding projected noise levels and mitigations measures such as a noise analysis prepared by a professional qualified to complete such a study may be required by the Board of Zoning Appeals;

4. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties; and
5. Parking shall be underground or to the rear or the side of the main structure.

#### 4.15 GARAGE SALES

1. Temporary sales events as defined within [Section 2.2](#). No more than three (3) events are permitted within any twelve (12) month period for each individual and property address.
2. Sales areas must be contained within the individual's property and may not encroach into a public right of way.
3. Sales events shall not be permitted to last more than three (3) days per event.
4. Tents may be used during the event subject to subsection (2) above and must be removed immediately following the conclusion of each event.
5. All items must be removed from the exterior of the premise at the end of the sales event.

#### 4.16 GENERAL REQUIREMENTS.

In addition to any special conditions and standards listed in the following subsections all applications for Conditional Use either as a Use Permitted with Conditions or a Conditional Use shall demonstrate that:

1. The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies.
2. The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses. Conditions may be imposed on a proposed Conditional Use to ensure that potential significant adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to, conditions or measures addressing:
  - A. Location on a site of activities that generate potential adverse impacts such as noise and glare;
  - B. Hours of operation and deliveries;
  - C. Location of loading and delivery zones;
  - D. Light intensity and hours of full illumination;
  - E. Placement of outdoor vending machines;
  - F. Loitering;
  - G. Litter control;

- H. Placement of trash receptacles;
  - I. On-site parking configuration and facilities;
  - J. On-site circulation;
  - K. Privacy concerns of adjacent uses.
3. The use can generally be accommodated on the site consistent with any architectural and design standards set forth in the applicable district regulations of this Code, and in conformance with all dimensional, site development, grading/drainage, performance, and other standards for the district in which it will be located.
4. To the maximum extent feasible, access points to the property are located as far as possible, in keeping with accepted engineering practice, from road intersections and adequate sight distances' are maintained for motorists entering and leaving the property proposed for the use.
5. The use will be adequately served by public facilities and services. Public facilities and services that may be considered in light of this standard include but are not limited to water, sewer, electric, schools, streets, fire and police protection, storm drainage.
6. The use provides adequate off-street parking on the same property as the use in compliance with standards set forth in this Code.
7. Any storage of hazardous material that is ancillary to a permitted use or a Conditional Use must meet the following conditions:
  - A. All storage shall be in compliance with all state, federal, and local regulations, particularly Part 11 Health and Sanitation Code of the City of Fairmont.
  - B. Such material shall be listed and made known with the Office of the Chief of the City of Fairmont Fire Department.
8. Unless addressed in the Use Standards, the use will be screened with fencing and/or landscaping in excess of what is required for the district as appropriate, if the use may otherwise result in an adverse impact on adjacent property benefiting from such screening.
9. Conditional Use decisions are made by the Board of Zoning Appeals. In considering the proposed Conditional Use the Board must determine whether all General Requirements and Special Conditions have been met.
10. The Board may impose additional conditions and safeguards deemed necessary.



11. The breach of any condition, safeguard or requirement shall be considered a violation of the Conditional Use approval. The board, following notice to the property owner, shall have the authority to revoke, after public hearing held in the same manner as the original approval, any Conditional Use if the applicant fails to comply with any of the applicable requirements in this Section or any other applicable sections of this ordinance.
12. Validity of Approval. Any approval given by the Board of Zoning Appeals under which the premises are not used or work is not started within six (6) months, or when the use or work has been abandoned for a period of one (1) year, shall lapse and cease to be in effect. The Board may permit one (1) six (6) month extension, if applied for in writing by the applicant prior to the expiration of the approval, provided that the Board finds that the extension is warranted due to the circumstances beyond the control of the applicant.
13. No application which has been denied wholly or in part by the Board of Zoning appeals shall be resubmitted for a period of one (1) year from the date of the last denial, unless permitted by the Board after a demonstration by the applicant of a change of circumstances from the previous application.

#### 4.17 HOME OCCUPATIONS<sup>1</sup>; MINOR AND MAJOR

1. General Standards: No home occupation shall be permitted that:
  - A. Changes the outside appearance of the dwelling or is visible from the street;
  - B. Creates a hazard to person or property, results in electrical interference, noxious fumes, and excessive noise or becomes a nuisance for the neighborhood;
  - C. Results in any outside storage or display of material, wares, inventory or merchandise;
  - D. Results in a non-resident employee contracted, employed or otherwise hired, on the premises;
  - E. Makes use of any accessory building other than for limited storage not to exceed the amount of area used by the home occupation in the principal residence;
  - F. Occupies more than twenty-five percent (25%) of the total square footage living space of the home (living space shall not

include any garage, attic, and basement). The applicant shall provide a sketch showing the entire floor plan, the total square footage of living space, and the area thereof to be utilized for the conduct of the home occupation;

- G. Results in retail sales from the premises; and
  - H. Is open to the public before 9:00 a.m., nor later than 5:00 p.m.
2. All home occupations shall be subject to and comply with all City Building, Fire, Life Safety, and all other applicable codes and regulations.
  3. All applicants must sign a Home Occupation Affidavit as provided for by the Planning Department.
  4. All home occupations shall be subject to inspection by the Building Inspector to determine compliance with the City Building, Fire, Life Safety and all other applicable codes and regulations.
  5. All home occupations shall be subject to all City business licensing requirements and to all City business and occupation tax filing and payment requirements.
  6. Minor Home Occupations. These are occupations that by nature generate little or no traffic, require a minimum amount of parking and will not result in the increased use of public services in excess of what is normal for an exclusive residential use. Minor home occupations may be permitted in residential districts subject to the General Standards for home occupations outlined above and the following:

Minor home occupations may be but are not limited to:

- A. Dressmaking, sewing, and tailoring, provided that no laundry service, pressing or cleaning is done on the premises;
- B. Painting, sculpting, writing;
- C. Telephone answering;
- D. Home crafts such as model making, rug weaving, wood working, and ceramics; not to include cabinet making or furniture refinishing;
- E. Tutoring for not more than one student at a time;
- F. Computer programming;
- G. Architectural, engineering, drafting or graphic services;

- H. Musical or artistic instruction for not more than one student at a time;
  - I. Accounting services;
  - J. Offices for contractors, including masonry, plumbing or painting provided that there is no on-site storage of materials;
  - K. Internet based retail services where customers are not coming to the home;
  - L. Any other similar use as determined by the Planning Director.
7. Major Home Occupations. These are occupations that by nature generate additional traffic, require parking, and the use of additional public services. Major home occupations may be permitted in residential districts. Conditional Use major home occupations include but are not limited to:
- A. Law offices;
  - B. Barbershops or beauty salons with a single chair, or single station tanning parlors;
  - C. Insurance offices;
  - D. Printing services;
  - E. Photographic services; and
  - F. Similar uses in nature as determined by the Planning Director.

#### 4.18 HOUSEKEEPING UNIT

The maximum number of unrelated individuals permitted to reside in any single dwelling unit in the various districts, where a residential use is permitted as a permitted use, a use permitted with conditions, or a conditional use, shall be as follows:

1. General Residential - 2 persons;
2. Neighborhood Residential - 3 persons;
3. Neighborhood Mixed Use - 3 persons;
4. City Center - 4 persons;
5. Main Corridor Commercial - 3 persons;
6. Highway Commercial - 3 persons;
7. Industrial - 3 persons;
8. Factory built home neighborhoods - 2 persons;
9. Mobile home parks - 2 persons; and
10. All districts not specifically provided - 3.

#### 4.19 LIBRARIES, MUSEUMS AND ART GALLERIES

An existing residential structure converted to a museum, library or art gallery shall:

1. Retain its residential character, appearance and driveway;
2. Be permitted one (1) sign. Sign size is permitted based on the linear frontage of the property at a ratio of one (1) square foot of sign size for every linear frontage of property to a maximum of 40 square feet;
3. Not create off street parking out of any portion of the required front, side or rear yards. All parking shall be situate towards the interior of the lot. Parking must be screened using a Type B screen type;
4. Not provide for any significant alteration to the exterior of the structure;
5. Not interfere with the quiet use and enjoyment of the neighboring properties as a result of noise, light or increased traffic;
6. Exterior lighting is limited to eighteen (18) feet in height and must be full cut-off fixtures oriented away from adjacent residential lots; and
7. Building height shall be as permitted for residential buildings within the district.

#### 4.20 LIGHT MANUFACTURING

Within any City Center, light manufacturing shall be subject to the following performance standards.

1. Air Pollution. Manufacturing processes emitting odor, dust, fumes, smoke or other pollutants shall not be permitted.
2. Vibration. Except in temporary instances during site construction work, the maximum permitted vibration from any cause shall not exceed the following, when measured at the lot line:



4.20.2 Maximum Permitted Vibrations	
Frequency (Cycles per second) 0008	Displacement Inches
10 and below	.0008
10 - 20	.0005
20 - 30	.0003
30 - 40	.0002
40 - 50	.0001
50 and above	.0001

- Radiation. Research operations shall cause no dangerous radiation at any property line and shall conform to all federal, state and/or local regulations and standards.
- Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air or water, and the disposal of radioactive wastes, shall conform to all federal, state and/or local regulations and standards.
- Electromagnetic Interference. Industries shall emit only that amount of unshielded spurious electromagnetic radiation as is necessary for the conduct of their operations. Federal Communications Commission requirements shall govern maximum radiation which tends to interfere with meaningful signals and all such emissions shall conform to all federal, state and/or local regulations and standards.
- Water Pollution. No effluent shall be discharged into any stream. Discharge into the City of Fairmont sewer system shall be as approved by the City Engineer and the Director of Public Works and shall conform to all federal, state and/or local regulations and standards.
- Industrial Waste. All industrial waste shall be treated and disposed of in such a manner as to comply with all federal, state and/or local regulations and standards.
- Storage Requirements. No outdoor storage of raw materials or component parts.

#### 4.21 LIMITED VIDEO LOTTERY

- Establishments that offer or provide limited video lottery regulated under the provisions of the Limited Video Lottery Act, West Virginia Code §29-22B-101 et seq. are permitted as a conditional use in the City Center and Highway Commercial districts, provided that any such establishment that offers video lottery shall not be located within 1,500 feet of any residential zone, school, church or place of worship, park, community center or facility, recreation center or facility, public building or public arena, or any other similar structure or any other structure which houses an establishment that offers or provides limited video lottery as measured in a straight line from the nearest point of the wall of the establishment offering limited video lottery to the nearest property line of any residential zone, school, church or place of worship, park, community center or facility, recreation center or facility public building or public arena, or any other similar structure or any other structure which houses an establishment that offers or provides limited video lottery.
- No establishment may be approved for the conditional use to offer or provide limited video lottery until such establishment has been in operation as a restaurant lounge under the provisions of this Ordinance for a period of one (1) year.
- No establishment may be approved for the conditional use to offer or provide limited video lottery when such establishment is located in an approved Historic district.
- All exterior signage and design of the establishment must be approved by the Planning Department.

#### 4.22 MIXED USE BUILDINGS<sup>§</sup> AND LIVE-WORK UNITS<sup>§</sup>

- Mixed-use buildings within the NR district are limited to main arterial street frontages only.
- Residential driveway character should be maintained.
- No outdoor sales or display is permitted in the front or side yards.
- All mixed-use buildings shall have at least two occupiable stories with at least fifty (50) percent of the habitable area of the building dedicated to residential use. The remainder of the building may be used for neighborhood commercial uses as permitted within the district.





5. New construction, additions, and renovations, rehabilitations, or remodels of existing structures shall meet all requirements of this Zoning Code, including all miscellaneous requirements provided by [Section 5.2, 5.4, and 5.5](#) of this Zoning Code.

#### 4.23 MOBILE HOME PARKS<sup>1</sup> WITH MORE THAN 24 SPACES

1. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the Board of Zoning Appeals;
2. Noise shall be of such a nature so as not to interfere with the quiet use and enjoyment of surrounding properties.
3. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties.
4. Other conditions which the Board of Zoning Appeals may deem warranted under the particular or unique circumstances of the situation necessary to meet the contour of the land and to protect the quiet use and enjoyment of surrounding properties.
5. Shall be subject to submission, review and approval of a site plan.
6. Shall provide improved active open space based upon a ratio of one-half (½) acre for each twenty-five (25) spaces.

#### 4.24 MOBILE VENDING

1. Operators or owners of a mobile vending operation must obtain a business license from the State of West Virginia and the City of Fairmont.
2. Operators must have all appropriate permits from the Marion County Health Department, City of Fairmont Building Department, and Fire Department.
3. Operators/Owners of mobile vending operations must have the property owner's written consent prior to setting up their business on or within said property.
4. Mobile vending vehicles must be parked in a legal manner and business operations shall be conducted only to pedestrians. The minimum number of parking spaces required for the permanent business location must be maintained.

5. No service to the public shall be made from the street side of the vehicles parked within an approved on street parking space.
6. Mobile vending carts and vehicles must be removed from the premises at the close of business every evening.
7. Mobile vending carts, trailers, and vehicles must be designed and built meeting normal industry standards and uses in a safe manner as determined by the City of Fairmont.
8. Mobile vending operations must not obstruct the safe ingress/egress or ADA accessibility within parking areas, sidewalks, or driveways.

#### 4.25 MULTI-FAMILY RESIDENCES; TOWNHOUSES<sup>1</sup>; DUPLEXES<sup>1</sup>

1. Townhouses
  - A. Townhouses may be permitted within a NR district subject to the minimum lot size requirements below.
  - B. Minimum size of each townhouse unit is 1,200 square feet and a minimum width of twenty (20) feet.
  - C. Density for townhome developments is based on the table within [subsection 4](#) below.
  - D. No more than nine townhouse units are permitted within each row of buildings. Separation between rows of buildings shall be achieved using a driveway or yard space no less than twenty (20) feet in depth.
2. Multiple Family Residences
  - A. Minimum lot size for multiple family developments within the NR district is 3 acres.
  - B. Minimum parking requirements shall be met using off-street parking only. Parking shall be paved and located within the side or rear yards.
  - C. Trash receptacles and equipment shall be located to the side or rear yard and screened from view using landscape treatment or privacy fence.
  - D. No less than fifteen (15) percent of the property must be dedicated to landscaped open space in the form of additional yard or park space. This requirement is in addition to required yard setbacks, parking, driveways and other site requirements. Maintenance of the open space will be provided by a homeowners association or the owner of the complex.

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3. Duplexes (Two-Family Homes).
  - A. Duplex developments must be visually compatible with the surrounding neighborhood.
  - B. Parking must be provided off-street with a paved surface and located within the side or rear yard. Minimum parking requirements must be met.
4. Minimum Lot Area for Multi Family Residences, Townhouse and Duplexes listed as Uses Permitted with Conditions or Conditional Uses. The minimum lot area requirements shall be as follows:

4.9.4 Minimum Lot Area for Multiple Family Residences	
Number of Dwellings Units in Building*	Area of Lot in Square Feet
Two-family Dwelling	7,000
Three-family Dwelling	8,000
More than 3 units	1 dwelling unit for every additional 1,000 square feet of lot area.
* Developable density may be affected by required setbacks, parking, landscaping and other land development or building code regulations.	

#### 4.26 NEIGHBORHOOD DEVELOPMENT STANDARDS

All new neighborhoods greater than 5 acres in size shall comply with the following general design provisions:

1. All neighborhoods shall have an identifiable center and edge;
2. Edge lots are readily accessible to the center;
3. Housing types are mixed and in close proximity to one another;
4. Street networks are interconnected and blocks are small;
5. Civic buildings, churches, if any, are given prominent sites throughout the neighborhood;
6. Each neighborhood shall contain, as its central focus, at least one square or park no smaller than 10,000 square feet within general walking distance of the geographical center of the neighborhood as determined by the Planning Department; and

7. No portion of the neighborhood shall be further than 600 feet from a park, square or other formal open space.

#### 4.27 OFFICE RETAIL OR SERVICE USES

1. In the NMU district:
  - A. Commercial office, retail, or service uses are a use permitted by right if they do not exceed 2,500 square feet in total floor area and are not expressly excluded from the district.
  - B. Existing commercial buildings where the office, retail or service area exceeds 2,500 square feet are a permitted use with conditions. These buildings may not be expanded unless it is to add a residential component thereby creating a mixed use building as defined by this ordinance and requiring conditional use approval.
  - C. New commercial office, retail, or service uses not exceeding 2,500 square feet in total first floor area and 5,000 square feet in total floor area are permitted as a conditional use.
2. In the City Center: In general, office, retail, or service, not exceeding 30,000 square feet, which are designed and/or operated to service the daily needs of the residents of the surrounding neighborhoods and provide workplace opportunities for the community are permitted unless otherwise noted.
3. Office, retail or service use in excess of 2500 square feet first floor and 5000 square feet total floor area (new construction).
  - A. Hours of operation shall be restricted to 8:00 a.m. to 10:00 p.m.;
  - B. Shall be oriented to the front of the lot facing the main street;
  - C. Parking shall be located in the rear or side yards;
  - D. No outdoor display of merchandise or products shall be permitted;
  - E. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the planning director;
  - F. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties;

- G. Other conditions which the Board of Zoning Appeals may deem warranted under the particular or unique circumstances of the situation necessary to meet the contour of the land and to protect the quiet use and enjoyment of surrounding properties;
  - H. Shall be subject to submission, review and approval of a site plan.
4. In the Education district, retail and service establishments, which do not occupy more than 10,000 square feet of floor space and whose primary customers are students or faculty of a college, university or institution of higher learning shall be permitted by right.

#### 4.28 OUTDOOR STORAGE (INCLUDING OUTDOOR DISPLAY AND SALES USES)

1. All outdoor sales or display of products (including automobile and lumber yard sales) shall be setback twenty (20) feet from the front property lines. Large surface parking lots should be visually and functionally segmented into several smaller lots. The size of any single surface parking lot shall be limited to three acres, unless divided by a street, principal building, or Type A Opaque Buffer.
2. A Type B Semi-Opaque Screen shall be provided around the perimeter of all outdoor sales areas.
3. All outdoor storage areas shall be located in the rear yard only. Only outdoor areas for sales may be permitted within the front yard subject to (1) above.
4. Fences visible from the street shall be a maximum of eight (8) feet in height, shall be decorative, and shall be made of wood, wrought iron, or similar material. Fences not visible from the street shall be a maximum of eight (8) feet in height and may be constructed of another durable material.

#### 4.29 PORTABLE STORAGE CONTAINERS<sup>m</sup>

1. Only one (1) portable storage container per property is permitted.
2. Portable storage containers must not remain at a property in any zoning district in excess of thirty (30) days within one calendar year.
3. Portable storage containers associated with construction at a site where a building permit has been issued are permitted for the duration of construction and shall be removed from the site within fourteen (14) days of the end of construction.

4. Portable storage containers shall be utilized only for the storage, loading, and unloading of personal property belonging to the property owner or lease holder.
5. No construction equipment, building materials, hazardous or flammable substances may be stored inside any container unless it is being used according to [subsection \(3\) above](#).
6. Portable storage containers shall not be utilized for the purpose of storing materials, equipment or merchandise related to a home occupation or otherwise used for commercial purposes.
7. No portable storage container shall be located on a public right-of-way or public property, unless the permit holder is the public entity on whose property or right-of-way the portable storage container will be located.

#### 4.30 RECREATIONAL FACILITIES<sup>m</sup>

1. All recreational facilities shall be treated as parks in design and landscaping. All structures associated with a recreational facility shall be located toward the perimeter of the lot.
2. Recreational facilities are encouraged to be built adjoining school campuses, parks, greenbelts, parkways, greenways, or waterfronts.
3. Parking shall be located behind structures, or along the perimeter of the lot and shall be in accordance with [Section 5.4](#).

#### 4.31 RESTAURANT/LOUNGE<sup>m</sup>

The permitted hours of operation for a restaurant and restaurant lounge are from 6:00 a.m. to 1:00 a.m.

1. Uses must meet the definition of restaurant lounge as provided in [Section 2.2](#) and the standards outlined in [Section 4.32](#).
2. The applicant must be licensed and in good standing with the West Virginia Alcohol Beverage Control Administration. Violations and enforcement actions on record at the Alcohol Beverage Control Administration will be considered by the Board of Zoning Appeals.
3. Any approval granted by the Board of Zoning Appeals shall be contingent upon the safe and orderly operation of a bar that does not cause a nuisance or hazard to the area.



4. The Board may consider evidence of public nuisance as determined by the City of Fairmont Police Department or City Manager at a duly advertised public hearing to review the Conditional Use Permit, which may be revoked if the Board finds the above conditions are not being met.

#### 4.32 SALE OF ALCOHOLIC BEVERAGES IN RESTAURANTS / LOUNGES

1. Food and non-alcoholic beverages must comprise a minimum of sixty percent (60%) of total gross sales of all food and drink items in each calendar month.
2. A seating capacity of at least forty (40) persons at tables or counters must be maintained for the principal purpose of serving meals. Seats at a bar which is primarily for the purpose of serving beer and/or alcoholic beverages shall not be counted or considered in determining whether the minimum seating capacity herein has been satisfied.
3. The licensee and/or the employees of the establishment shall, at the time of each sale or at the time of payment therefor, record the amount of revenue derived from the sale of beer and alcoholic beverages separately from the amount of revenue derived from the sale of food and non- alcoholic beverages.
4. For each calendar month, the licensee shall maintain and preserve accurate and adequate records including those required by subsections hereof, to prove compliance to the City's Finance Director, and shall make all records available for review and audit promptly upon request by said Finance Director. The records for each month shall be preserved for not less than twenty-four months.
5. Quarterly, the licensee shall send to the City Finance Director summaries showing the amount of revenue derived from beer and/or alcoholic beverages versus the amount derived from the sale of food and non-alcoholic beverages.

#### 4.33 TELECOMMUNICATION FACILITIES

1. All wireless communications facilities and freestanding communications towers shall comply with any and all Federal Aviation Administration\ and all other federal and state regulations.
2. Wireless communications facilities may exist in all districts as a component of an existing or proposed structure not intended for residential use (i.e. church bell tower or steeple) or attached to existing or proposed public infrastructure such as street lights, water towers, and electrical transmission towers. All such facilities shall be designed using stealth design elements. Wireless communications facilities attached to existing or proposed structures such as water towers, transmission towers, church steeples, streetlights, bell towers, of similar structures do not require a Conditional Use Permit.
3. Freestanding wireless communications towers may exist only in Highway Commercial and Industrial districts as a conditional use. The owner or developer shall submit a site plan for all proposed tower projects and require a Conditional Use Permit, which shall be subject to the following conditions:
  - A. The maximum height of all freestanding wireless communications towers shall be 180 feet; provided, however, that the maximum height of a tower may be greater than 180 feet, but less than 200 feet when such tower is designed and constructed to accommodate the present or potential collocation of an additional wireless communication service provider and / or public safety communication use;
  - B. Freestanding wireless communications towers shall be setback from all property lines a distance equal to 125% of the total height of the tower measured from grade elevation from all adjoining properties. Peripheral supports and guy anchors for communication towers may be located within the required setbacks, provided that they shall be located within the boundaries of the property on which the tower is located and shall be located no closer than five (5) feet from any lot line;
  - C. No freestanding wireless communications tower shall be sited within one (1) mile of another wireless communications tower except as a component of existing public utility infrastructure;

- D. All ancillary structures, including guy anchors and peripheral support shall be screened with and opaque screen of landscaping , wood fence, or wall, or any combination thereof;
- E. All freestanding wireless communications towers in the Highway Commercial and Industrial districts shall be constructed using a monopole design; and
- F. All freestanding wireless communications towers shall, when appropriate, display, in large bold letters the following “HIGH VOLTAGE”.

#### 4.34 TEMPORARY USES

1. All Temporary Uses must receive approval of a Certificate of Zoning Compliance from the Planning Department.
2. The Certificate of Zoning Compliance may be conditioned upon such special requirements as the Planner or Building Inspector may determine are necessary to achieve the purposes of this Ordinance and protect the public health, safety and welfare.
3. Failure to meet the requirements of this Ordinance and conditions of the Certificate of Zoning Compliance will necessitate the revocation of the Certificate.
4. Christmas tree sales, fireworks, book buy back, sidewalks sales, and similar temporary retail sales are permitted as temporary uses within nonresidential districts and are limited to a maximum duration of forty-five (45) days within a calendar year. Truck trailers and flat beds are not permitted except for short-term delivery services. Temporary uses utilizing a tent or similar canopy shall secure approval from the Fire Prevention and Training Officer of the City of Fairmont Fire Department.
5. Contractor's offices and real estates offices/trailers and equipment sheds may be permitted for the period of active construction or selling of units. No sleeping or cooking accommodations are allowed.
6. Produce stands may be permitted for a maximum of six (6) months but may be re-permitted upon submission of a new application.
7. Temporary uses shall present proof of property owner approval prior to the issuance of a permit.

8. Carnivals and Circuses. The activities shall be open to the general public. Such activities outside of local event parks within the City shall be limited to ten (10) days and must comply with the requirements of Building and Fire standards.

#### 4.35 USE AND PARKING OF RECREATIONAL AND COMMERCIAL VEHICLES.

1. Recreational Vehicles: A recreational vehicle shall not be considered a dwelling unit. The use of a recreation vehicle for living, sleeping or housekeeping and its connection to utility services (other than for periodic maintenance and/or repair purposes) shall be prohibited unless the vehicle is located in a camping and recreational vehicle park designed to accommodate recreation vehicles.
2. Commercial Vehicles: Commercial vehicles used primarily for commercial purposes and with more than two axles are prohibited from parking in residential districts. This shall not be construed as to prevent the temporary parking of delivery trucks, moving vans, and similar vehicles, which deliver goods and services. No residentially developed lot may be used as the base of operation for any freight hauling truck.

#### 4.36 USES NOT EXPRESSLY PERMITTED OR CONDITIONAL.

It is recognized that new types or forms of land use will develop within the City of Fairmont that are not anticipated by this Zoning Ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Planning Commission to determine if the use can reasonably be interpreted to fit into a similar use category described in the ordinance. The Planning Commission may make such a determination after conducting a public hearing. It is also recognized that certain allowed uses of land may pose significant impacts to adjacent properties, surrounding neighborhoods, and regional infrastructure. In order to provide for the appropriate review and approval of such uses, the Planning Director may designate, in her discretion, that any such uses be processed as conditional uses in accordance with the provisions set forth in [Article 4](#) of this Code, upon a determination of their potential for adverse impact. Unless a use is allowed as a "permitted use by right", "use permitted with conditions", "conditional use", "nonconforming use", or "temporary use", then such use is prohibited.



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# *Article 5.0*

## *Site Standards*





<b>Article 5.0</b>	<b>Site Standards</b>
5.1	Exterior Lighting
5.2	Architectural Requirements
5.3	Signs and Similar Structures
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# 5.0 Site Standards

## 5.1 EXTERIOR LIGHTING.

1. Purpose and Intent. It is the goal of this Section to provide guidance to developers in implementing minimum requirements for lighting for all non-residential projects and multi-family developments. The requirements of this Section will serve to provide direction in controlling light spillage, glare and intensities so as not to adversely affect motorists, pedestrians, and land uses of adjacent properties. To ensure appropriate lighting while minimizing its undesirable side effects, the following regulations are established.
2. Applicability. Lighting facilities shall be required for all off-street parking areas and off-street loading areas and for all driveways providing ingress and egress thereto for all non-residential and multi-family developments. In the approval of any development plan, the Planning Director or Board of Zoning Appeals shall have the authority to require lighting to be incorporated for other uses or locations where in their reasonable discretion such lighting is warranted.
3. Outdoor Lighting Standards. All outdoor lighting shall conform to the following standards:
  - A. All exterior lighting, including free-standing, canopy, pole, and building mounted, shall be fully shielded and directed downward to prevent off-site glare. Canopy lighting shall be fully recessed.
  - B. The intensity of light within a site shall not exceed ten (10) footcandles within any part of the site and one (1) footcandle at any property line, except where it abuts a residential district or use where a maximum of .5 footcandles is permitted. The only exception is with vehicle service use canopies and new or used vehicle sales lighting, where a maximum of twenty (20) footcandles is permitted within the site but the above requirements shall apply to intensity at the property line.
  - C. Footcandles is the unit of light density incident on a horizontal plane and measurable with an illuminance meter, a.k.a. light meter.
  - D. Outdoor lighting fixtures shall be designed, located and mounted at heights no greater than eighteen (18) feet above grade for non-cut-off lights, or thirty five (35) feet above grade for cut-off lights; and located at least ten (10) feet from property lines defining rear and side yards or required perimeter landscaped areas required by this Code.
  - E. When the light source is located adjacent to a residential neighborhood the height of the fixture may not exceed eighteen (18) feet.
  - F. All non-essential lighting will be required to be turned off after business hours, leaving only the necessary lighting for security. Non-essential lighting applies to display, aesthetic, parking and sign lighting.
  - G. Fixtures should be placed to provide uniform distribution of light and to avoid intense lighting that produces excessive glare. Fixture locations should be chosen to minimize the hazards of glare.
  - H. Lighting fixtures in scale with pedestrian activities shall provide for uniform distribution of lighting to produce minimal shadows.
  - I. Uplighting of any architectural feature of a building or of a sign is permitted, but such lighting may consist only of low wattage fixtures (designed for bulbs not exceeding seventy-five (75) watts) trained directly onto the surface intended to be illuminated. Internally lit signs are acceptable in certain zoning districts provided that they meet the requirements of this ordinance.
  - J. Light sources should not be located within any perimeter-landscaped areas except on pedestrian walkways.
  - K. The internal illumination of building-mounted awnings is prohibited.
  - L. All lights must emit either white or orange yellow illumination.
  - M. When outdoor lighting installation or replacement is part of a development proposal for which site plan approval is required under these regulations, the Planning Director shall review and approve the lighting installation as part of its site plan approval.

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- N. Specifications for all proposed lighting fixtures including mounting heights, photometric data, designation as Illumination Engineering Society of North America (IESNA) "cut-off" fixtures, Color Rendering Index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures. The lighting plan shall provide a design for illuminations in accordance with this Section.
  - O. When an outdoor lighting installation is being modified, extended, expanded or added to, the entire outdoor lighting installation shall be subject to the requirements of this Section.
  - P. All lighting fixtures in any Historic district shall be approved by the Historic Preservation Review Commission.
  - Q. No flickering or flashing lights shall be permitted. The use of laser light source, search lights or any similar high intensity light for outdoor advertisement or entertainment is prohibited.
4. Installation and Maintenance.
- A. Where practical, electrical service to outdoor lighting fixtures shall be underground, not overhead.
  - B. Lighting fixtures shall be maintained by the property owner so as to always meet the requirements of this ordinance.
5. Modifications. The Planning Director may modify the requirements of this Section if it is determined that in so doing, it will not jeopardize the intent of this Section. However, exceeding the height and intensity of lighting fixtures as stated in the Section may only be approved as a variance by the Board of Zoning Appeals.
6. Outdoor Recreational Lighting.
- A. Because of their unique requirements for nighttime visibility and limited hours of operation, the lighting of active recreation areas, such as for ball fields and tennis courts are not considered in this Section. Lighting conditions for such uses shall be approved by the Planning Director in accordance with approved standards and specifications.
  - B. Temporary holiday lighting during the months of October, November, December and January shall be exempt from the provisions of this Section, provided that such lighting does not create dangerous glare on adjacent streets or properties.

## 7. Exemptions.

- A. Outdoor light fixtures installed prior to the effective date of this Section and replacements of the luminaire or lamp of those fixtures.
- B. Fossil fuel light produced directly or indirectly by the combustion of natural gas or other utility-type fuels.
- C. Streetlights located within a public right-of-way.
- D. Outdoor light fixtures, which use an incandescent light bulb of, or light level equivalent to, one-hundred fifty (150) watts or less except where they create a hazard or nuisance from, glare or spill light.
- E. Lighting necessary for road or utility construction or emergencies.
- F. Temporary lighting.

## 5.2 ARCHITECTURAL REQUIREMENTS

1. Applicability. This article is intended to serve as a visual definition of the architectural building requirements noted throughout this Ordinance. The key architectural elements of building type and frontage serve as the essential elements of all district provisions. Setbacks, height, and use are all components of a building's frontage and type.
2. Architectural Standards. Any and all construction requiring a building permit shall conform to the architectural requirements of this Section. The Planning Director may approve minor variations to this Section provided similar materials, configurations, and/or techniques are used that fulfill the intent of this Section. Major variation to building facade requirements due to unique building use requirements may be approved by the Board of Zoning Appeals, provided the overall pedestrianism of the street is maintained in accordance with all other standards. All variations shall be noted on the final approved plan or building permit. All structures shall adhere to the following general principles:
  - A. General Principles.
    - i. To perpetuate the unique building character of the City of Fairmont, development shall employ dwelling types that are sympathetic to the historic architectural vocabulary of the area in their massing and external materials.

- ii. The front elevations facing the street and the overall massing shall be pedestrian in scale.
  - iii. Buildings adjacent to each other shall be architecturally compatible through similar silhouettes, spacing between facades, setbacks, proportions, treatments, exterior materials, scale, massing, and/or architectural style.
  - iv. The primary entrance shall be both architecturally and functionally designed on the front facade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade. The use of fire-escape or exit-only doors as primary entrances is explicitly prohibited.
  - v. All new construction shall conform in street orientation, massing, lot width and setbacks to adjacent existing and proposed structures subject to building placement requirements within each zoning district.
  - vi. Ground mounted mechanical equipment shall be located to the rear or side yard and screened from off-site view. Roof-mounted mechanical equipment shall be screened from off-site view by a parapet wall.
  - vii. The front facade of all buildings shall extend parallel to the frontage line of the lot.
  - viii. No roofing, siding or other exterior building or construction material of any kind or nature shall be used, installed, affixed, applied, or applied to any structure so as to create a candy stripe effect, whether in an horizontal or vertical pattern.
- B. Residential Buildings (All Districts).
- i. General Requirements.
    - a. All garages must be set back a minimum of twenty (20) feet from the sidewalk to allow unobstructed pedestrian access.
    - b. All garages with more than two bays shall be turned such that the bays are not visible from the street. Exception: Corner lots may have garage access (side loaded) from the non-fronting street.
    - c. Garage doors are not permitted on the front elevation of any multi-family dwelling.
  - ii. Materials. Residential exterior building walls shall be wood clapboard, wood shingle, wood drop siding, cement plank board, wood board and batten, brick, stone, stucco, approved vinyl, or similar material approved by the Building Inspector.
  - iii. Configurations.
    - a. Main roofs on residential buildings shall be symmetrical gable, mansard, gambrel, or hip with a minimum pitch of 3:12. Monopitch (shed) roofs are allowed only if they are attached to the wall of the main building. No monopitch roof shall be less than 3:12. Flat roofs may be allowed upon approval by the Building Inspector.
    - b. No horizontal dimension of the main body shall have a width of less than 24 feet and a length of 40 feet.
    - c. The structure shall contain a minimum of 960 square feet of living space, excluding garages, attics and basements.
    - d. Subject to [Section 5.2.2.A.viii](#) two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - e. Exterior chimneys shall be finished in brick or other material approved by the Building Inspector.
    - f. The undercroft of buildings shall be enclosed.
  - iv. Techniques.
    - a. Overhanging eaves may expose rafters.
    - b. Flush eaves shall be finished by profiled molding or gutters.



## C. Manufacture Homes.

## i. General Requirements.

- a. If a manufactured home is located in any district other than a Manufactured Home Neighborhood (MHN), it must bear a seal certifying that it was built to the standards and meets or exceeds the construction standards promulgated by the Federal Housing and Urban Development, as provided West Virginia Code §8A-11-1, in effect at the time of construction and must satisfy each of the following additional criteria:

- (1) The structure shall be installed on a permanent masonry perimeter foundation that complies with the requirement of the City's duly adopted building code;
- (2) No horizontal dimension of the main body shall have a width of less than 24 feet and a length of 40 feet; and
- (3) The structure shall contain a minimum of 960 square feet of living space, excluding garages, attics and basements.

- b. In no instance may a manufactured home be used for a nonresidential purpose.
- c. No manufactured home shall be placed in a designated historic district or an area that is eligible for historic designation.

ii. Manufactured Homes in Manufactured Home Neighborhoods. In addition to satisfying all of the general requirements of manufactured homes, a manufactured home in a MHN must comply with the following requirements:

## a. Materials.

- (1) The exterior siding shall consist of wood, masonry finish, brick or horizontally grooved or lap sided or its appearance and shall be comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction. Unfinished plywood, oriented strand board, or other sheeting materials shall not be installed as finished siding. The use of flat, vertical or corrugated metal for the exterior walls or roof shall be strictly prohibited.

- (2) The roof shall be finished with a type of shingle that is commonly used in standard residential construction.

## b. Configurations.

- (1) Stairs, porches, entrance platforms and other means of entrance and exit to the manufactured homes shall be installed and constructed in accordance with the City of Fairmont's duly adopted Building Code
- (2) The pitch of the roof of the manufactured home shall have a minimum vertical rise of three (3) feet for each twelve (12) feet of horizontal run, or the standard of each individual manufacturer's equivalent to a 3' x 12' roof pitch.
- (3) The roof of the manufactured home shall have an overhang (eave) extending at least ten (10) inches from each vertical exterior wall. A site installed gutter may be counted in the width of the eave.
- (4) The front facade of the building shall extend parallel to the frontage line.



- c. Techniques.
  - (1) The manufactured home is set up on the site in accordance with established industry standards.
  - (2) The tongue, axels, transporting lights, and removable towing apparatus are removed after placement on the lot but before occupancy.
- D. Commercial and Mixed Use Buildings.
  - i. Materials.
    - a. Commercial building walls shall be brick, decorative concrete masonry unit, cast concrete, stucco, stone, marble, or other materials similar in appearance and durability. Regular concrete block may only be used on above grade building walls not visible from a public street. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
    - b. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, asphalt shingles or similar material.
    - c. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof that are visible on the front and side elevations from any public street. When used on the side elevation, parapets shall be terraced.
  - ii. Configurations.
    - a. Subject to [Section 5.2.2.A.viii](#) two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - b. Sky-lights shall be flat (non-bubble).
    - c. At least seventy (70) percent of the street level frontages shall be in windows or doorways. Street level windows shall be visually permeable. Mirrored glass is not permitted in any location. Faux or display casements are not permitted in lieu of exterior window treatments for the frontage elevation.
- d. No frontage wall shall remain unpierced by a window or functional general access doorway for more than sixteen (16) feet.
- iii. Techniques.
  - a. Stucco shall be float finish.
  - b. Windows shall be set to the inside of the building face wall.
- E. Light and Heavy Industrial Buildings.
  - i. Materials.
    - a. All building walls visible from a public street shall be brick, cast concrete, stucco, stone, marble, decorative concrete masonry unit or other materials similar in appearance and durability. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
    - b. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, asphalt shingles or similar material.
    - c. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof on the front and side elevations that are visible from any public street. When used on the side elevation, parapets shall be terraced.
  - ii. Configurations.
    - a. Subject to [Section 5.2.2.A.viii](#) two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - b. Skylights shall be flat (non-bubble).
  - iii. Techniques.
    - a. Stucco shall be float finish.
    - b. Windows shall be set to the inside of the building face wall.
- F. Civic Buildings (Churches, Schools, Government Offices, and Other Civic Facilities). Schools, churches, and government buildings should be built so that they terminate a street vista whenever possible, and shall be of sufficient design to create visual anchors for the community. Civic buildings shall adhere to the provisions as marked below.





## i. Materials.

- a. Civic building walls shall be clad in stone, stucco, brick, marble. Decorative cast concrete and wood or similar siding may be used as a minority element on facades facing public streets.
- b. Roofs shall be clad in slate, sheet metal, corrugated metal, or asphalt shingles, or other material similar in appearance and durability.
- c. Gutters and down spouts shall be made of copper, galvanized or aluminum painted metal.
- d. Columns, if provided, shall be made of wood, cast concrete, or fiberglass.
- e. Stained glass or other decorative window treatments are encouraged.
- f. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.

## ii. Configurations.

- a. Subject to [Section 5.2.2.A.viii](#) two wall materials may be combined horizontally on one facade. The heavier material should be below.
- b. Flat roofs are permitted, but civic buildings adjacent to residential structures shall have pitched roofs or architectural features similar to the adjacent residential structures to ensure compatibility. This requirement may be waived when it is deemed to serve no meaningful purpose or public benefit.

## iii. Techniques. Windows shall be set to the inside of the building face wall.

5.3 SIGNS<sup>1</sup> AND SIMILAR STRUCTURES

1. Scope. The purpose of this ordinance is to create the legal framework for a comprehensive and balanced system of signs that will preserve the right of free speech and expression, provide an easy and pleasant communication between people and their environment, and avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. With these purposes in mind, it is the intent of this ordinance to authorize the use of signs that are:

- A. Compatible with their surroundings;
- B. Appropriate to the activity that displays them;
- C. Expressive of the identity of individual activities and the community as a whole; and
- D. Legible in the circumstances in which they are seen.

## 2. Procedures and Permits.

- A. It shall be unlawful for any person to erect, structurally alter, or relocate any sign or sign structure without first obtaining a permit from the Building Department, except as provided in [Section 5.3.3, Permit Exemptions](#).
- B. The application for the permit for a sign shall be made upon forms provided by the Building Department. All applications shall at a minimum be accompanied by accurate sketches and scaled drawings showing the proposed sign or sign structure, its content, and the location of the proposed sign upon the premises. All applications shall be accompanied by the requisite application fee which shall be established by the Building Department. All applications shall be accompanied by the written consent of the owner or his designated agent of the premises upon which the sign is to be erected or his designated agent.

No application shall be accepted for review unless it is complete, accompanied by the appropriate fee and signed by the applicant. The Building Inspector may require that the location of a proposed sign be based on a survey by a registered land surveyor or engineer, at the expense of the applicant. The Building Inspector shall endeavor to complete a review of the completed application within ten (10) working/business days.

- C. At any time and at his sole discretion, the Building Inspector may inspect existing signs to determine if they are detrimental to the public health, safety and welfare. If they are detrimental to the public health, safety and welfare, they shall be removed or repaired within five (5) working/business days following the determination by the Building Inspector. At the determination of the Building Inspector, more time may be granted to repair or replace the sign if the property owner can demonstrate a good faith effort of working toward compliance with this ordinance. If a nonconforming sign is determined by the Building Inspector or owner to require repair, it must be brought into compliance with these regulations within a period of time determined by the Building Inspector.
- D. With all applications for a permit under this Article there shall be a bond with surety approved by the City or a public liability insurance policy issued by an insurance company doing business in this State covering the period of construction and maintenance after completion, which bond or insurance policy shall protect against personal injuries and property damage with limits of not less than one million dollars (\$1,000,000.00), and shall provide for the matters and requirements contained in this Article.
- The City shall be named as an additional insured on any such bond or policy of insurance issued hereunder and it shall be indicated on the policy or separate documentation that the City shall be notified of coverage termination. If work authorized by a permit has not been completed within six months after the date of issuance, such permit shall become null and void and the sign or such portion thereof as may be completed shall be deemed abandoned.
3. Permit Exemptions. A permit shall not be required for the following signs and activities. Except where noted otherwise, the types of signs listed below are allowed in addition to the maximum number and square footage of regulated signs as permitted in other sections of this Article:
- A. Servicing, repainting, or cleaning an existing sign, except where such activity requires structural alterations either of the sign pole or the structure supporting the sign face.
- B. House number or nameplate identifying the occupant or address of a structure and not exceeding two (2) square feet in area.
- C. Real estate sign<sup>■</sup> which is six (6) square feet or less in surface area and is five (5) feet or less in height, provided that there shall be no more than one such sign for any street frontage and such sign shall not project beyond the property line. The sign shall advertise the building or property on which the sign is located, and must be located so as not to obstruct or interfere with view of drivers on public roads or those accessing the property.
- D. The name of the building and date of erection, when cut into any masonry surface or tablet sign.<sup>■</sup>
- E. One banner<sup>■</sup> advertising a particular event for a business shall be allowed provided that:
- Such sign shall be placed no more than seven (7) days prior to the event and removed no later than seven (7) days after the event.
  - Such signs can only be used three (3) times a year.
- F. Any non-commercial flag bearing the official seal of the United States, other recognized country, or State of West Virginia.
- G. Traffic or other official government sign, such as legal notice, railroad crossing, danger or other emergency sign.
- H. Yard, garage, or moving sale signs that are placed no more than seven (7) days prior to the sale and removed within two (2) days after the conclusion of the sale.
- I. Traffic control signs on private residential property which contains no commercial message of any sort.
- J. Public warning signs<sup>■</sup> for trespassing or danger area.
- K. Temporary nonprofit event sign which does not exceed sixteen (16) square feet, and is only permitted when used to advertise a specific event. These signs shall only be permitted for the period of not more than fourteen (14) days prior to the event and five (5) days after the specific event has ended.
- L. Non-commercial seasonal signs<sup>■</sup>.
- M. Drive-through menu signs.



- N. One banner<sup>□</sup> advertising the opening of new businesses shall be allowed as an alternative to a permitted permanent wall sign<sup>□</sup> provided that:
- Such signs for new businesses shall be limited to a duration of thirty (30) days within the first sixty (60) days after issuance of the first business license for that business in that location or from the issuance of a Certificate of Occupancy for that location, whichever is later.
  - Such signs shall be attached to and parallel with a wall of the building on which wall signs<sup>□</sup> are permitted and shall not exceed thirty-two (32) square feet in surface area.
- O. Temporary commercial signs<sup>□</sup> placed by businesses or the West Virginia Division of Highways during the construction of any road improvement project. To be exempted from the permitting process, a business may either (a) relocate its permanent sign out of the construction zone to a temporary location on-site, or (b) replace the permanent sign with a temporary new sign no larger than the maximum height and size limits permitted in the zoning district. In any case, once the road improvements are completed in front of the business, any sign placed temporarily during the construction period must be removed within seven (7) days.
- P. The changing of an approved copy or message of a sign specifically designed for the use of replaceable or changeable copy.
- Q. Construction signs which are thirty-two (32) square feet and non-illuminated placed on the building site only.
- R. Sandwich Board<sup>□</sup>. Such sandwich board signs<sup>□</sup> shall be permitted for the purpose of announcing activities and specials with a total area, inclusive of all structural support, not greater than six (6) square feet per side and located on the property where the business is located, and must be taken inside daily at the end of business hours or 9 PM, whichever is earlier. Sandwich board signs<sup>□</sup> are not permitted in residential districts.
4. Measurement of Individual Sign Area. This Section of the Article explains how a sign is to be measured in order to determine its size.
- The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color forming an integral part of the display or used to differentiate a sign from the background against which it is placed. Necessary supports or uprights on which a sign is placed are excluded from the measurement of sign area.
  - The permitted actual size of a sign shall apply to each facing of a sign structure; however, where signs are double-faced, placed back-to-back, or in a V-type construction, only one side of the sign shall be counted when the V is at a 45 degree angle or less. Back-to-back signs must be enclosed within the same cabinet or affixed to the same pole and not separated by more than eighteen (18) inches to qualify under this Section.
  - If a sign is painted on a wall, and includes background colors and/or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.
  - The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. No filling, berming, mounding or excavating for the purpose of locating the sign is permitted
5. Prohibited Signs. The following signs are prohibited in all districts, except as otherwise noted herein:
- A flashing sign or an animated sign which incorporates in any manner flashing or moving lights or any other visible moving or revolving part.
  - Commercial banners, pennants, flags (except as permitted in [Section 5.3.3, Permit Exemptions](#)), spinners, or streamers

- C. Signs which resemble any traffic sign<sup>☐</sup> or traffic control device on a public street or road, by reason of size, shape, location, color, or illumination and/or which make use of such words as “STOP”, “LOOK”, “DANGER”, or other similar words, phrases, symbols, or characters, in such a manner as to imply the need or requirement of stopping or the existence of danger.
  - D. Signs which obstruct free ingress or egress from a door, window, fire escape, or other exitway
  - E. Vehicle signs<sup>☐</sup> which are displayed for the purpose of exhibiting commercial advertising, identifying an on-site business, or supplying directional information to an off-site business, by means of any of the following:
    - i. The absence of a current, lawful license plate affixed to the vehicle on which the sign is displayed; or
    - ii. The vehicle being inoperable; or
    - iii. The vehicle on which the sign is displayed is not parked in a lawful or authorized location, or is parked in a manner that is distinct or different from the pre-determined parking area; or
    - iv. A vehicle that utilizes a sign that is not an integral piece of an automobile is not permitted. No additional materials can be added to a vehicle for the purpose of using it as a sign; or
    - v. The primary use of the vehicle on which the sign is displayed is not for business activities associated with products or services designated by the sign. Primary use shall be determined by the Building Inspector; or
    - vi. The vehicle on which the sign is displayed is a part, section, or element of an outdoor display by a dealership or business of transportation vehicles such as motor vehicle, recreational vehicle, watercraft, manufactured home, motorcycle, or utility trailer.
  - F. Changeable letter freestanding signs<sup>☐</sup> or portable signs<sup>☐</sup>.
  - G. Signs determined by the Building Inspector to contain subject matter defined within this ordinance related to “Specified Sexual Activities” or “Specified Anatomical Areas”.
  - H. Signs now or hereafter existing which no longer advertise a bona fide business, activity, campaign, service or product.
  - I. Any sign located in a public right-of-way, except as permitted by the West Virginia Department of Transportation or the City of Fairmont and in compliance with all local regulations. Any sign placed in the public right-of-way in violation of this code shall be prohibited and may be seized by the enforcement official or other representative of the City, and the person owning or placing the sign may be charged both with a violation of this chapter and with the cost of removing and disposing of the sign.
  - J. Signs attached to utility poles and West Virginia Division of Highways sign poles.
  - K. All off-premise signs, except as permitted by this Article.
  - L. Signs or banners placed on fabric not intended to be used for such purpose.
6. General Sign Regulations.
- A. Regulations by Type of Sign:
    - i. Electronic Changing Message Sign<sup>☐</sup>. Political subdivisions<sup>☐</sup> may be permitted these types of signs upon approval by the Board of Zoning Appeals upon pre-approved forms in accordance with the provisions of [Section 8.9](#) et seq., Board of Zoning Appeals of this Code.
    - ii. Kiosks<sup>☐</sup> shall be permitted for the purpose of announcing activities, and the like, scheduled to occur in such buildings. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such kiosks<sup>☐</sup> shall not be closer than ten (10) feet to the curb nor more than ten (10) feet in overall height above grade.
    - iii. Dynamic Signs<sup>☐</sup>. Must adhere to the following standards, in addition to compliance with all applicable districts and all other general sign regulations:
      - a. Can only be fifty (50) percent of the maximum sign area permitted for an on premise sign;





- b. Dynamic signs<sup>§</sup> may only be in the form of wall mounted or monument signs<sup>§</sup>. No pole mounted or roof mounted dynamic signs<sup>§</sup> are permitted;
  - c. If the proposed location for said sign is adjacent to any property classified, used or occupied as residential, such sign shall not be illuminated by artificial means after 9:00 p.m.; in no case shall a dynamic sign<sup>§</sup> be lit from 11p.m. to 6a.m.;
  - d. No sign may exceed a maximum illumination of 0.8 footcandles above ambient light level as measured from the edge of the property boundaries;
  - e. No such sign shall be of such a nature or character as to be detrimental or injurious to any adjacent property; the neighborhood or the public welfare;
  - f. Only one (1) per place of business is permitted regardless of the number of street frontages the businesses occupy;
  - g. Display area must freeze on a black screen if the sign malfunctions;
  - h. Will be subjected to an annual fee and inspection by the Building Inspector;
  - i. Must be tied into the Amber Alert system unless the applicant adequately demonstrates that this requirement cannot be met;
  - j. Any such sign shall be placed only in such a location that is in harmony with the general purpose and intent of this Article;
  - k. Such sign shall not be placed in a location that will cause confusion or provide a distraction to vehicular traffic;
  - l. The message displayed on such signs shall relate exclusively to activities or events which are slated to occur on the same premises as the location of the sign; No off-premise advertising is permitted. Exceptions for units of local government which may use signs to announce public events at their sole discretion;
  - m. The message shall be limited in words and duration so that it can be read in no less than eight (8) seconds and not cause confusion or provide a distraction to vehicular traffic;
  - n. Message or text is prohibited from scrolling across screens. Transition between screens must be instantaneous without fading or dissolving; and
  - o. Such additional requirements as may be necessitated by exceptional physical conditions of the applicant's parcel real estate.
- iv. Monument Signs<sup>§</sup>. All monument signs<sup>§</sup> shall stand in a bed of cultivated landscaping. This area shall contain low-growing materials such as vegetative ground cover, perennials, and shrubs<sup>§</sup> and shall be bordered by acceptable curbing such as wood or concrete. Such curbing shall be located in such a manner so as to prevent automobiles from contacting the sign when maneuvering. The perimeter of the landscaped area shall extend outward from the monument sign<sup>§</sup> by at least four (4) feet.
  - v. Projecting Signs<sup>§</sup>. Shall be governed by the following regulations
    - a. A projecting sign<sup>§</sup> shall not extend over more than one-half (1/2) of a public sidewalk nor be lower than nine (9) feet above ground level.
    - b. They shall be attached at least six (6) inches away from the wall, and angular projection at the corner of a building is prohibited.
    - c. Shall project from the wall at an angle of ninety (90) degrees.
    - d. Shall not extend vertically beyond the window sill of the second story.
  - vi. Imbedded Building Signs<sup>§</sup>. Shall be no more than twenty (20) square feet in size and shall only bear the name of the owner, the name of the building, or the date of erection of the building.



- vii. Permanent Window Signs<sup>☐</sup>. Shall be regulated by the following stipulations:
  - a. All window signs<sup>☐</sup> shall consist of high quality durable materials. Floating neon, applied vinyl, etched glass, and painted images with appropriate design features shall be considered.
  - b. Neither temporary nor permanent signs shall obscure the visibility of the store interior or its merchandise displays.
  - c. Borders around or adjacent to and backgrounds behind window sign<sup>☐</sup> lettering shall count toward the total sign area. All window signs<sup>☐</sup> shall be included in the total allowable sign area.
  - d. Window signs<sup>☐</sup> shall not exceed ten (10) percent of each individual window up to a maximum of eight (8) square feet per window and a total of twenty-five (25) square feet per building façade.
  - e. Messages shall be placed only within the top twenty-five (25) percent or bottom twenty-five (25) percent of a window.
  - f. All window lettering/window signs<sup>☐</sup> shall require issuance of an appropriate sign permit.
- B. General regulations applicable to all signs:
  - i. No sign shall be permitted within the clear-vision area as defined.
  - ii. The back of any permitted sign structure must be shielded from public view by a building, other structure, high planting, or another sign of the same size (where permitted), unless such back is painted a neutral color or is enclosed in a solid metal backing that is treated or painted against corrosion.
  - iii. All signs shall be maintained in good and safe structural condition.
  - iv. The general area in the vicinity of a sign must be kept clear of weeds, debris, trash, and other refuse by the property owner.
  - v. In no case shall any sign cast light directly upon any part of an adjacent residential property at anytime of the day or night.
  - vi. Lots fronting two or more streets are allowed the permitted sign size for each street frontage. The square footage permitted for each street frontage cannot be combined and used on one (1) frontage. In no case shall the maximum aggregate sign area for the respective zoning district be exceeded unless expressly permitted by this ordinance.
  - vii. All signs, except where noted, must be placed on the property containing the business which is being advertised. In no case shall any part of the sign be placed within five (5) feet of a private or public right-of-way. Unless otherwise restricted in this ordinance, a sign shall comply with the height regulations for structures in the zoning district where the sign is located or unless otherwise specifically regulated in this Article.
  - viii. Signs must be placed on the frontage side which was used to calculate the size of the sign. An exception to this requirement may be made by the Building Inspector in accordance with the provisions set forth herein:
    - a. Such additional sign location shall be necessitated by the exceptional physical conditions of the applicant's parcel of real estate, which may include the fact that the parcel is exceptionally narrow, shallow or steep;
    - b. No two signs shall be located within ten (10) lineal feet of each other. No portion of either sign face shall be considered in calculating the required distance;
    - c. The location of the sign shall not cause or permit an increase in the applicable maximum permitted aggregate signage;
    - d. If the proposed conditional location is adjacent to any property classified, used or occupied as residential, whether single family or multi-tenant, such sign shall not be illuminated by any artificial means;





- e. No such sign shall be of such a nature as to be detrimental or injurious to any adjacent property; the neighborhood or the public welfare;
  - f. Any such sign must be placed in a location that is in harmony with the general purpose and intent of this article;
  - ix. No sign or sign structure shall be erected or placed at any location where, by reason of the position, shape, size or color of the sign it may interfere with, obstruct or prevent the free ingress, egress and regress to or upon any sidewalk, street, or alley of the City.
  - x. Any sign not specifically mentioned is prohibited
- 7. On-Premise Signs
  - A. Residential Districts: Mobile Home Park, General Residential, and Neighborhood Residential, as follows, except as noted under [Section 5.3.7.D](#), Signs for Parking Areas:
    - i. One non-illuminated nameplate sign or non-illuminated, non-commercial message are permitted, provided the surface area does not exceed two (2) square feet and the sign is set back at least five (5) feet from the front property line. The maximum height of the sign shall be six (6) feet.
    - ii. One or more wall or monument signs<sup>□</sup> shall be permitted for the conditional uses where permitted: church, school, museum, other community facility, other use, or nonresidential principal use. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such sign shall be solely for the purpose of identifying the use and its services or activities, or identifying the building, and may be illuminated by means which directs light onto sign face only. No illuminated or flood lights are permitted. Changeable copy signs<sup>□</sup> may also be permitted provided that they do not exceed fifty (50) percent of the total area of the sign
  - B. Highway Commercial, Industrial, High Technology Park, and Business Districts: Neighborhood Mixed Use, Main Corridor Commercial, City Center, and Educational: On-premise signs shall be permitted as follows:
    - i. Area Limit:
      - a. In the Highway Commercial, Industrial, and High Technology Park districts, the maximum aggregate area for all signs is three hundred (300) square feet per place of business unless expressly permitted otherwise by this ordinance. One (1) square foot per one (1) lineal foot of street frontage shall be permitted.
      - b. In the Business districts: Neighborhood Mixed Use, Main Corridor Commercial, City Center, the aggregate area for all signs shall be limited to one (1) square foot per one (1) lineal foot of street frontage with a maximum aggregate area of one-hundred (100) square feet per frontage per place of business unless otherwise expressly permitted in this ordinance.
- iii. One (1) kiosk shall be permitted for the following conditional uses where permitted: church, school, museum, or other community facility, as defined by the City Code.
  - iv. For major subdivision development: one permanent identification sign not exceeding forty (40) square feet in area. The Building Inspector may approve additional subdivision entrance signs where he finds affirmatively to at least one (1) of the following criteria:
    - a. The subdivision has principal entrances from two or more major streets.
    - b. The subdivision is physically divided by an existing major street.
    - c. Major entrances from the same street are separated by at least 330 feet.
  - v. Multi-family residential complexes may be permitted one (1) sign identifying a rental office which shall not exceed four (4) square feet if the sign is visible from a public right-of-way;

## ii. Height Limit:

- a. In the Highway Commercial, Industrial, and High Technology Park districts, the overall height limit of the entire sign structure shall be twenty (20) feet from grade.
- b. In the Business districts, the overall height limit of the entire sign structure shall be ten (10) feet from normal grade.

## iii. Permitted Signs: The following signs are permitted and shall be regulated as follows in regard to number, size and type of on-premise signs:

- a. Monument Signs<sup>■</sup>: Monument signs<sup>■</sup> shall be limited to a total of one (1) per street frontage. To provide an incentive for business to erect monument signs<sup>■</sup> in Business and Industrial districts, the maximum size for monument signs<sup>■</sup> may be increased to one-and-one-quarter (1 1/4) square feet per one (1) linear foot of street frontage. In the Business districts there is a maximum of 125 square feet. In no case shall a business be permitted both a pole sign<sup>■</sup> and a monument sign<sup>■</sup>. The following example is provided to illustrate the incentive; Example: A business has 100 linear feet of frontage may elect to have a 50 square foot wall sign<sup>■</sup>, and a monument sign<sup>■</sup> as large as 62.5 square feet including the 25% bonus allowed for monument signs<sup>■</sup>.
- b. Marquee Signs<sup>■</sup>: No more than one (1) marquee sign<sup>■</sup> shall be permitted per place of business. No part of the sign shall extend beyond the outer edge of the marquee<sup>■</sup>. The roofs of all marquees<sup>■</sup> shall be properly guttered and connected by downspouts so that the water there from will not drip or flow onto public property.
- c. Wall Signs<sup>■</sup>: An identification sign on an awning<sup>■</sup> or canopy<sup>■</sup> shall be considered a wall sign<sup>■</sup>.

Under no circumstances shall a permitted wall signs<sup>■</sup> cover more than thirty-three (33) percent of a side of a building. A wall sign<sup>■</sup> shall not extend further than twelve (12) inches above or from the building to which the sign is attached.

- d. Kiosks<sup>■</sup>: No more than one (1) kiosk shall be permitted for the following uses where permitted: church, school, museum, or other community facility, as defined by this City Code.
- e. Roof Signs<sup>■</sup>: In the Highway Commercial, Industrial, and High Technology Park districts, only one (1) roof sign<sup>■</sup> shall be permitted per place of business. The height of a roof sign<sup>■</sup> shall not exceed three (3) feet above the average height of the roof parapet. The size of a roof sign<sup>■</sup> shall not exceed seventy-five(75) percent of the lot frontage (i.e., 0.75 square feet for every one (1) linear foot). No roof sign<sup>■</sup> shall project over a public right-of-way. In no case shall it exceed the applicable district height limit for primary structures.  
The supporting members of roof-mount signs shall appear to be free of any extra bracing, angle irons, guy wires or cables. Supports shall appear to be an architectural and integral part of the building. Supporting columns of round, square or shaped steel members may be erected if the required bracing which is visible to the public is minimized or covered.
- f. Pole signs<sup>■</sup>: No more than one (1) pole sign<sup>■</sup> shall be permitted per place of business. In no case shall a business be permitted both a pole sign<sup>■</sup> and a monument sign<sup>■</sup> on the same frontage.
- g. Changeable Copy Signs<sup>■</sup>: Signs with changeable copy are permitted provided that the changeable copy area does not exceed fifty (50) percent of the total permitted area of the sign. Changeable copy area is



calculated in relation to the maximum aggregate sign area permitted in the zoning district.

- h. Projecting signs<sup>■</sup>: A maximum sign size of twenty (20) square feet and a height of fifteen (15) feet is permitted.
  - i. Dynamic Signs<sup>■</sup> are permitted in Highway Commercial, Main Corridor Commercial and City Center districts excluding the Downtown Historic district and subject to standards in [Section 5.3.6](#).
- C. Historic Districts. All signs in any zoning district which has been properly designated a historic district as provided for by this Fairmont Code, shall meet the requirements of the Historic Preservation Review Commission, in addition to satisfying all applicable regulations, restrictions or requirements of the district in which they are to be located.
- i. General sign requirements. All newly erected or replacement signs within the City of Fairmont's Historic districts must be approved by the Fairmont Historic Preservation Review Commission (FHPRC). Proposed signs for FHPRC review must be submitted with photos, drawings, color samples, and the City of Fairmont Sign Application.
  - ii. The size and location of any newly constructed or reconstructed or replacement sign in the designated historic districts must be consistent and compatible with the architecture, design, scale, and height of the building. With regards to the size, color and graphic representation of signage the FHPRC will allow a creative, diverse, and unique approach, however, signs shall not overwhelm or obscure architectural elements or details.
    - a. Original signage deemed historically significant by the FHPRC must be retained and preserved where feasible. This is also applicable to mosaic tile and sidewalk signs.
    - b. Lettering and Graphics that are carved or painted onto the background of the primary material shall be permitted.
  - c. All wood signs must be painted. Stains and varnishes that create a rustic appearance shall not be used.
  - d. Indirect lighting with period lighting fixtures to illuminate signs and the surrounding building façade shall be permitted.
  - e. Signs shall be limited to trading name and logo only.
  - f. Sign and sign logo are to be of a "Theme Nature", that reinforces the name of the business, and products sold by the business.
  - g. Animated components, flashing or lights, formed plastic, injected molded plastic, channel letters, or box sign with acrylic front are prohibited.
  - h. All signs or sign panels must have finished edges to form a cap that frames the sign.
  - i. No exposed conduit, tubing raceways, conductors, transformers, or other equipment shall be permitted on the exterior of a building.
  - j. Sign illumination is limited to the hours 6AM to 9PM or between store hours of business.
  - k. All sign bolt fastening and clips shall be of hot dipped and galvanized iron, stainless steel, aluminum, glass or bronze, no black iron materials of any type shall be permitted, and materials that will corrode or rust may not be used.
  - l. Location of all openings for conduits and sleeves in the sign shall be indicated by the sign contractor on drawings submitted. The sign contractor will install same in accordance with the approved drawing.
  - m. No sign maker's labels or other identification (including UL Label) shall be permitted on the exposed surface of signs, except those required by local ordinance. If required by local ordinance, such labels or other identifications shall be in an inconspicuous location.

- n. The following types of lighting for signs will not be permitted
    - (1) Exposed fluorescent tubes
    - (2) Unshielded lamps
    - (3) Exposed light bulbs
    - (4) Mercury vapor
    - (5) Sodium vapor
  - o. The use of natural materials is encouraged. Acceptable materials for the sign, and sign band are:
    - (1) Finished wood
    - (2) Polished or brushed aluminum
    - (3) Bronze
    - (4) Painted wood
    - (5) Glass
    - (6) Other material approved by the FHPRC
  - p. The following materials are prohibited
    - (1) Simulated brick
    - (2) Simulated stone
    - (3) Simulated wood or wood grain plastic laminate
    - (4) Peg board
    - (5) Wall covering
    - (6) Texture paint
    - (7) Fake stucco
  - q. All interior signs<sup>□</sup> located within five (5) feet of front window and can be seen from the exterior of the building must be approved by FHPRC and must meet the above criteria
  - r. Professionally painted or lettered signs on glass doors or show windows are encouraged.
  - s. Any alteration to existing sign must be approved by FHPRC, and the work must be completed by a professional sign fabricator.
  - t. Internally illuminated cabinet signs and neon “open” signs are prohibited.
- D. Parking Areas. On-premise signs for parking areas shall be regulated as follows in all districts:
- i. Directional signs and pavement markings may be used to control vehicular movement in a parking area. Signs shall be limited to six (6) square feet each with an overall height limit of four (4) feet.
  - ii. Parking or driveway area signs are permitted for the purpose of indicating entrances, exits, name of establishment to which such parking area is accessory, or conditions of use. The actual business occupying the site. No additional advertising on such signs may be permitted.
- E. Unique Land Uses
- i. Hospitals. Hospitals shall be permitted one (1) monument sign<sup>□</sup> at each entrance which shall not exceed 120 square feet in area or ten (10) feet in height. Hospitals also shall be permitted one (1) building-mounted sign for each building entrance for the purpose of identifying a hospital function. No such sign shall exceed fifty (50) square feet in area. On-site parking directional signs and pavement markings shall be used to control vehicular movement in a parking area. Signs shall be limited to twenty-five (25) square feet each and shall not exceed six (6) feet in height.
  - ii. Gasoline Stations/Convenience Stores. In addition to other sign regulations contained in this ordinance, these establishments which sell gasoline may have the following signs:
    - a. Signs identifying only gasoline prices and/or the location of full-service and self-service areas may be located at and secured to each pump island and shall not be calculated in the maximum aggregate sign area. Temporary signs, attached to the pumps and no larger than one (1) square foot each, shall not be computed in the maximum aggregate sign area permitted for the business by this ordinance.
    - b. Each gasoline pump may display only the brand name or emblem of the gasoline, which shall not exceed the limits on the face of the pump.



- c. Where the establishment provides inspection services, a State of West Virginia inspections sign may be erected on the property, provided that the sign does not exceed a surface area of eight (8) square feet per side.
  - d. Signs informing the general public of employee certifications and the use of special brand name products used in the conduct of general daily business may be erected if placed flush against the building and shall be exempt from this regulation.
  - e. Signs which may be required by local, state or federal law in the interest of public health and safety shall be exempted from this regulation. These signs may include, but not be limited to, "no smoking" and "turn off engines while fueling" signs.
- iii. Multi-Tenant Developments. Multi-tenant developments shall include shopping centers, multi-tenant complexes and multi-tenant office buildings.
- a. The project is allowed one (1) monument sign<sup>□</sup> per street frontage with a maximum of height of ten (10) feet and a maximum size of one (1) square foot per one (1) linear foot of frontage with an overall maximum size 100 square feet. The monument sign<sup>□</sup> shall denote the name of the development; major anchor tenants for the project also may be listed on the sign.
  - b. Additionally, the project is allowed a maximum of one (1) wall sign<sup>□</sup> per tenant. The following scale shall be used in determining which formula shall be used to calculate the permitted sign size for each tenant
    - (1) Store frontage of <twenty-one (21) feet... ratio of two (2) square feet per one (1) lineal foot of store frontage.
    - (2) Store frontage of 21-50 feet... ratio of 1.75 square feet per 1 (1) lineal foot of store frontage.
    - (3) Store frontage > fifty (50) feet... ratio of 1.5 square feet per one (1) lineal foot of store frontage with a maximum of 100 square feet.
    - (4) End units shall be permitted a maximum of one (1) wall sign<sup>□</sup> for each exterior side for a maximum of two (2) signs. Each sign is not to exceed one (1) square foot per lineal foot width for the wall where the sign is attached.
  - c. Kiosks<sup>□</sup> shall be permitted for the purpose of announcing activities, and the like, scheduled to occur in such buildings. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such kiosks<sup>□</sup> shall not be closer than ten (10) feet to the right-of-way nor more than ten (10) feet in overall height above grade.
  - d. Dynamic signs<sup>□</sup> subject to the requirements of [Section 5.3.6](#) only one (1) per development is permitted.
  - e. Out parcels are permitted two (2) wall signs<sup>□</sup>, with each sign not to exceed one (1) square foot per lineal foot of width for the wall where the sign is attached
- iv. Theaters. One (1) sign which carries the name of the theater is permitted. Additionally, one (1) marquee sign<sup>□</sup> not to extend twenty-four (24) square feet per movie screen is permitted. Such sign shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. The total sign area of the marquee sign<sup>□</sup> shall not be included in the maximum aggregate of 300 square feet.
8. Off-Site Advertising Signs<sup>□</sup>. Off-site advertising signs<sup>□</sup>, known as billboards<sup>□</sup> or postal panels, shall be permitted in Industrial and Highway Commercial zoning districts. Such off-site advertising signs<sup>□</sup> shall mean any sign the subject matter of which relates to products, accommodations, goods services, or activities



which are sold, offered for sale, or provided from a site, parcel of real estate, location or premises other than upon which the sign is located. Billboards<sup>■</sup> shall be permitted provided they meet the following requirements:

- A. Must be located along major arterial roads or an interstate;
- B. Must be located a minimum of forty (40) feet away from any road, residence, or building;
- C. Lighting used to illuminate the billboard<sup>■</sup> may not interfere with aircraft in the vicinity;
- D. Lighting used to illuminate the billboard<sup>■</sup> may not interfere with the use or enjoyment of adjacent landowners;
- E. Maximum size of 600 square feet;
- F. Maximum height of twenty-five (25) feet;
- G. Billboards<sup>■</sup> must be separated by a minimum of 2000 feet regardless of jurisdictional boundaries;
- H. Billboards<sup>■</sup> using animation, movement, or moving light is prohibited;
- I. Billboards<sup>■</sup> may not obstruct authorized traffic signs<sup>■</sup> or signals;
- J. Billboards<sup>■</sup> may not be attached to a vehicle;
- K. Deteriorated or damaged billboards<sup>■</sup> must be removed; and
- L. Annual inspection and fee will be required.

#### 9. Nonconforming Signs

- A. In the event a nonconforming sign is structurally damaged in any manner, it may be repaired or reconstructed and used as before, if such repair or reconstruction is complete within thirty (30) days of the date of such damage, unless thirty (30) percent or more of the sign and/or its structure are damaged. If thirty (30) percent or more of the sign and/or its structure are damaged or the repair or reconstruction is not completed within thirty (30) days, the entire sign and its structure shall be removed and a new sign which conforms to the requirements of this ordinance may be erected, if otherwise permitted by this ordinance, except as provided in [Section 5.3.8](#).

- B. In the event a nonconforming sign is structurally altered in any manner, the entire sign and sign structure shall be removed and a new sign which conforms to the requirements of this ordinance may be erected, if otherwise permitted by this ordinance.
- C. Any temporary or portable sign<sup>■</sup> erected or displayed prior to the effective date of the amendment of this Article, and which is determined to be nonconforming shall be removed.
- D. The burden of establishing a sign to be legally nonconforming rests upon the person, firm or corporation claiming legal status for the sign.
- E. Nonconforming signs or sign structures must be completely removed or replaced with signs which fully comply with the regulations of this ordinance when one or more of the following situations occur:
  - i. The name or ownership of a business changes; provided however, that upon application to the Board of Zoning Appeals in accordance with the provisions of [Section 8.9](#) of the Fairmont City Code particularly [Section 8.9.6.F](#) thereof, the Board of Appeals may authorize the substitution of one (1) name or owner for another so long as no structural alterations to the nonconforming sign are made.
  - ii. A new sign is desired, whether or not the name of the business or use changes.

#### 10. Maintenance; Abandonment.

- A. Maintenance. Every sign or sign structure, whether or not a permit is required, shall be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts, painting, repainting, cleaning and other acts required for the maintenance of such sign. No person shall maintain or permit to be maintained on any premises, owned or controlled by him, any sign or sign structure which is in a dangerous or defective condition. No sign painted or printed on paper or fabric shall be posted or otherwise secured directly to the surface of any awning<sup>■</sup>, canopy<sup>■</sup>, utility service pole, building or structure not intended for signs.





B. Surrounding Area. The owner of any property on which a sign is located and those responsible for maintenance of the sign shall be equally responsible for the conditions of the area in the vicinity of the sign and shall be required to keep this area clean, sanitary and free from noxious or offensive substances, rubbish and flammable waste materials.

C. Abandonment. Any sign or sign structure, including temporary signs or sign structures, that is located on property which becomes vacant and is unoccupied for a period of 120 days shall be deemed to have been abandoned.

Abandoned signs and sign structures are prohibited and upon abandonment as defined herein the sign shall be removed within thirty (30) days by the owner or person, firm or corporation responsible for the sign or owner of the premises or the person, firm or corporation responsible for the premises as follows:

- i. Abandoned signs and their structures which are both nonconforming, shall be removed within ten (10) days after being designated as abandoned;
- ii. Abandoned signs where the sign is non conforming but the structure is conforming, the nonconforming sign shall be removed within ten (10) days after being designated as abandoned;
- iii. Abandoned signs, where both the sign and the structure are conforming: the sign shall be removed within ten (10) days after being designated as abandoned but the conforming structure may remain.

#### 11. Registration of Persons in Sign Business.

- A. Every person engaged in selling, erecting, altering, repairing and maintaining signs or sign structures including but not limited to marquees<sup>□</sup>, porte-cocheres, awnings<sup>□</sup>, canopies and any other similar type of outdoor display regulated by this Article shall apply to the City of Fairmont for registration, except as otherwise noted herein.
- B. The sign contractor at all times shall maintain in full force and effect contractor's public liability insurance covering personal injuries and property damage with limits of not less than \$1,000,000.00, which policy shall name and identify the City of Fairmont as an

additional insured. The applicant for registration at the time of application shall file with the City Clerk a certificate of standard form evidencing that such insurance is in force and effect. The applicant shall be responsible for providing the City with notification of insurance cancellation at least thirty (30) days prior to such action.

#### C. Sign Contractors License.

- i. Upon compliance with the provisions for liability insurance providing a copy of state license and payment of the fee stipulated in this Article, the applicant shall be eligible to receive a City of Fairmont Sign Contractors License.
- ii. A City of Fairmont Sign Contractors License shall authorize the holder thereof to engage in the business of signs and other similar types of outdoor displays and devices regulated by this Article from the date of issuance to the succeeding June 30; provided that the holder complies with the requirements of this Article.

D. The license may be renewed for a period of one (1) year upon application and payment of the annual fee; provided, however, that at the time of renewal, the application shall file with the City Clerk a certificate of standard form evidencing that the liability insurance required by this Article is in force and effect for the renewal period. In addition, the applicant shall provide proof that all State workers compensation premiums are paid and that workers' coverage is in force and effect. Application shall be made for renewal before July 1. Failure of currently registered persons to renew any certificate within thirty (30) days after July 1 shall automatically result in a double fee at the time of renewal.

E. If a person changes the name or form of organization under which he operates, such person shall be required to register and pay the required fee as would be required of a new registrant. Nothing in this Article shall be construed to permit the transfer of a registration from one registrant to another.

- F. No person shall engage in selling, erecting, altering, repairing or maintaining sign structures or projecting signs<sup>☐</sup>, ground signs<sup>☐</sup>, roof signs<sup>☐</sup>, wall signs<sup>☐</sup>, post signs, globe signs, barber pole<sup>☐</sup> signs, awnings<sup>☐</sup>, canopies, marquees<sup>☐</sup> or porte-cocheres or any other similar type of outdoor display regulated by this Article without having been registered as provided under this Section.

#### 12. Registration and Permit Fees.

- A. Every person engaging in selling, erecting, altering, repairing and maintaining signs or sign structures, barber poles<sup>☐</sup>, marquees<sup>☐</sup>, porte-cocheres, awnings<sup>☐</sup>, canopies and other types of outdoor display regulated by this article shall be charged the following fees for registration: Certificate of registration: ninety dollars (\$90.00).
- B. The following fees shall be charged for permits to erect and various types of signs and any other similar type of outdoor display regulated by this Article:

5.3.12.B Sign Permit Fees	
Type of Sign	Fee
Non profit banner <sup>☐</sup> placed by City of Fairmont	\$10 first location, \$5 each additional location
Billboard <sup>☐</sup>	\$75.00 + \$1 per square foot
	\$100.00 annual inspection
Dynamic	\$75.00 + \$1 per square foot
	\$75.00 re-inspection
	\$100.00 annual inspection
All other signs or other similar types of outdoor display regulated by this article	\$25.00 + \$1 per square foot
	\$25.00 re-inspection
Exempt Signs	No Fee

In the event any sign or similar structure, for which a permit is required by this Article, is commenced prior to obtaining such permit, the fee above specified shall be doubled.

#### 13. Revocation of Registration or Permit. The City Manager or Finance Director are

- A. hereby authorized and empowered to revoke the license of any sign contractor under this article who, having been notified of a violation according to the procedures established in the ICC International Building Code, and NFPA Electrical Code, Property Maintenance Code, or any of the other provisions of the City Code or any of the provisions of this Article, shall fail to remove or abate such violation within thirty (30) days after notification. Such revocation shall be final and the person affected shall not be eligible to receive a new registration certificate within thirty (30) days after such revocation.
- B. The City Building Inspector or Planning Director or their designate are hereby authorized and empowered to revoke any permit issued by the City under this Article upon failure of the holder thereof to comply with any of the provisions of this Article or any state applicable, local, or national code. They are also authorized and empowered to revoke a permit for the erection of any sign or similar structure which violates the provisions of this Ordinance.

14. Inspections and Enforcement. The City Building Inspector or his designee shall make an inspection of any sign or structure regulated by this Article at the time of sign erection. The Inspector shall cause to be removed any sign that violates any provision of this Article or a sign or structure for which no permit has been issued. The owner of the property on which the sign or structure is located or the owner or person, firm or corporation responsible for the sign or structure itself shall be notified in writing of the violation and if not altered or removed to meet the requirements of this article within twenty (20) days for structural deficiencies or thirty (30) for type, size, or location deficiencies, such sign or other structure shall be removed by the City or designee and the cost of such work shall be charged to the appropriate party and collected in the manner provided by law.

Notwithstanding the above, in cases of emergency, or if the sign or structure is in danger of imminent collapse, is defective, or poses a substantial and present risk to persons or property, the inspector may cause the immediate removal of such sign or structure without notice.



15. Continuing Violations. The non-abatement of a violation of the provisions of this Article, after due notice, shall be considered to constitute a separate violation for each day that such violation is permitted to exist.
16. Penalty. Whoever violates any provision of this Article shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than \$100.00 or more than \$500.00 or same as Zoning Code and/or Building Code
17. Appeals. Anyone violating any portion of this code shall have ten (10) days to appeal to the Board of Zoning Appeals. Any violation to International Code Council or National Fire Protection Association codes shall have twenty (20) days to appeal to the International Code Council Board of Appeals.
18. Non-Conforming Signs. It is the policy of the City to encourage and, to the maximum extent practicable, require that all signs within the City be brought into compliance with the requirements of this Ordinance.
  - A. A sign which was lawfully erected prior to the effective date of this ordinance but which does not conform in one or more respects with the requirements of this Ordinance may remain in use, subject to the requirements of this Section and other applicable requirements of City Ordinances.
  - B. Limitations on Nonconforming Signs.
    - i. Temporary Signs. Any nonconforming temporary sign shall be removed on or before 365 days after the effective date of this Ordinance or shall be considered in violation of this Ordinance.
    - ii. Abandonment. Any sign, including its frame and support structures, related to a use or business that ceases to exist or operate for a continuous period of ninety (90) days shall be considered non-conforming and shall not be reused for sign purposes unless and until it is in full conformity with the provisions of this Ordinance, subject to issuance of a new sign permit.
    - iii. Routine Repairs and Maintenance. Repairs and maintenance of non-conforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color.

- iv. Required Removal. Where an amendment to a previously approved development plan is proposed, approval of such plan shall be contingent upon removal of all non-conforming signs on the site. For example, if an existing retail establishment proposes a building addition or parking expansion, then any non-conforming signs on the property must be brought into compliance as a condition of approval of the amended site plan.

#### 5.4 PARKING

1. General Parking Principles. Off-street Parking Space Design Standards and Setback Requirements: Where required, off-street parking facilities shall be designed, constructed and maintained according to the following standards and regulations:
  - A. Ingress and Egress
    - i. Adequate ingress and egress to the parking facility shall be provided by clearly defined driveways in accordance with access management requirements of the City of Fairmont.
    - ii. All spaces shall be provided adequate access by means of maneuvering lanes.
    - iii. Spaces backing directly onto a street or use of the street for maneuvering between parking rows shall be prohibited.
    - iv. Access to off-street parking which serves a nonresidential use shall not be permitted across land that is zoned or used for residential purposes.
  - B. Driveways.
    - i. In residential districts, all driveways serving a single-family or two-family dwelling shall be a minimum of twelve (12) feet and a maximum of twenty-four (24) feet in width. A greater width may be permitted for lots exceeding sixty (60) feet of width at the road frontage.

- ii. For single-family and two-family uses, only one (1) driveway access per unit is permitted; however a lot with at least eighty (80) feet of frontage along a single street or a lot with two (2) road frontages may be permitted one (1) additional driveway access. Driveways located in a front yard shall be subject to [Section 5.4.D](#) below.
  - iii. In commercial and industrial districts, and for all non-residential uses in residential districts, all access driveways shall be a minimum of twelve (12) feet in width for one-way drives and twenty-four (24) feet in width for two-way drives.
  - iv. In all cases, driveways shall be located to minimize traffic conflicts with traffic entering the street from either the same or the opposite side of the street. Where applicable, driveway placement shall conform to access management requirements of the City of Fairmont.
- C. All parking areas and driveways for all uses shall be paved with a permanent surface material or contain a similar type material approved by the Planning Department. Gravel and other stabilization material without a permanent wearing surface is not permitted unless the driveway serves a single family residential driveway off of an existing gravel allyway. Except for parking areas and associated driveways serving one- and two-family dwellings, a raised or rolled concrete curb at least six (6) inches in height shall be installed with the construction of all driveways, parking lots, access lanes and other vehicle maneuvering areas to prevent motor vehicle conflicts with abutting landscape areas, sidewalks, streets, buildings or adjoining property.
- D. In a residential district, no more than forty (40) percent of the front yard may be used for parking, including driveways. Vehicles may not be parked or stored upon any lawn or landscaped area. Front yard parking areas shall be designed to residential driveway standards and resemble a residential driveway extending from the curb cut to the front building line. All driveways and parking areas must be paved and if the proposal is to extend an existing driveway or parking area, then like material must be used.
- E. All parking lots for multi-family and non-residential uses must be setback a minimum of five (5) feet from all property lines and screened in accordance with [Section 5.5](#).
- F. Off-street parking areas for new commercial, industrial, or multi-family residential developments shall be designed to accommodate containment facilities for both garbage and recycling containers.
- G. Bicycle parking is encouraged for uses within the City Center, Technology district, Main Corridor Commercial and Neighborhood Mixed Use districts and all civic uses.
- H. All off-street parking facilities shall be designed with appropriate means of vehicular access and maneuvering area to public avenues, streets, roads, or alleys, and shall comply with the West Virginia Division of Highways' Manual on Rules and Regulations for Constructing Driveways on State Highway Rights of Way then in effect, which is hereby adopted, by reference, for the purpose of prescribing minimum standards of, and for, construction of driveways for parking facilities within the corporate limits.
- I. All off-street parking facilities, except for one- and two-family dwellings, shall be submitted for site plan review and approval. Any curb cut or driveway access to any public street or alley shall be constructed in accordance with the plans approved by the Director of Public Works.
- J. No building permit shall be issued, no use shall be established or changed, and no structure shall be erected, enlarged or reconstructed unless the applicant has presented satisfactory evidence via parking lot design, that the off-street parking and loading spaces herein are provided in the minimum amounts and maintained in the manner specified; provided, however:
  - i. For the enlargement of a structure or for the expansion of a use of structure or land there shall be required only the number of additional off-street parking and loading spaces as would be required if such enlargement or expansion were a separate new structure or use; and





- ii. For a change in the class or use of a structure or land, the number of additional off-street parking and loading spaces required shall be equal to the number required for the new use, less the number of spaces which would have been required for the previous use if it had been established in conformance with this Section; but in no case shall the total number of spaces furnished be required to exceed the minimum required for the new use.
  - K. Off-street parking facilities required herein shall be utilized solely for the parking of passenger automobiles or light trucks with not more than two axles, belonging to patrons, occupants or employees of specified uses. Said parking facilities shall not be used for the storage, display, sale, repair, dismantling or wrecking of any vehicle, equipment or material, unless such facilities are enclosed in a building and otherwise permitted in the district, and unless such display is conducted upon stalls that are otherwise considered surplus to the requirements herein.
  - L. In determining the minimum required number of off-street parking or loading spaces, the following instructions shall be applicable in such computations:
    - i. If the unit of measurement is any fraction of the unit specified in relation to the number of spaces to be provided, said fraction, if less than one-half or less than 0.5, the fraction shall be disregarded, however if the fraction is more than one-half or more than 0.5, then the fraction shall be considered as being the next unit and shall be counted as requiring one (1) space.
    - ii. In sports arenas, churches and other places of assembly in which patrons occupy benches, pews or other similar seating facilities, each twenty-four (24) inches of such seating shall be counted as one (1) seat for the purpose of determining requirements hereunder.
  - M. Required off-street loading and unloading spaces shall not be construed as being part of the required off-street parking spaces.
  - N. No part of any alley or street or other public right-of-way shall be used to meet the minimum parking requirements of this code, unless otherwise provided for herein.
  - O. Number of employees indicates the number of employees on the largest shift, unless otherwise indicated.
  - P. Every company car, truck, tractor or trailer normally stored at a business site shall be provided with an off-street parking space. Such space shall be in addition to the parking requirements listed in table below.
  - Q. For uses not specified in this Section, or in such instance when the requirement for an adequate number of spaces is unclear or not specified in another part of this Section for conditional uses, etc., the number of parking spaces shall be determined by the Planning Director on the basis of similar requirements, the number of persons served or employed, and the capability of adequately serving the visiting public. Such determination may be appealed to the Board of Zoning Appeals.
2. General Parking Requirements
- A. Standard Requirements. All square footage is in gross leasable square feet. Parking requirements may be satisfied using on-street parking in front of buildings or public lots with 300 feet of primary building entrances. (See table on the following page).

5.4.2.A Parking Requirements	
Use	Minimum Off-Street Parking Requirements
Assembly Hall/Dance Hall	1 space per 4 persons at maximum capacity
Assisted Living/Nursing Homes, Sanitariums Convalescent and Personal Care Homes, Long Term Care Facility, Residential Board and Care Facility	1 per 4 beds
Auditoriums, Stadiums, Gymnasium, and other sports arenas	One parking space for each four seats plus additional spaces equal in number to at least fifty percent (50%) of employees rounded to the nearest whole number. Where individual seats are not provided, each twenty-four inches of benches or similar seating shall be considered as one seat.
Automobile Sales & Service Garages	For automobile sales and service garages such parking spaces shall be required for vehicles offered for sale, repair, storage and servicing plus one space for each employee on the largest shift.
Bed & Breakfast Inns/ Hotels/ Motels/Tourist Homes/Lodging, Rooming and Boarding House	1 per bedroom or suite
Churches	For churches one parking space for each four seats. Where individual seats are not provided, each twenty-four inches of pew or similar seating shall be considered as one seat, plus one additional space for each church official resident on premises, plus two spaces for each five employees.
Child Care Center/Child Care Facility	One parking space per employee and one additional parking space for every ten (10) children enrolled at the child care center/facility. One designated drop off/pick-up space shall be permitted for each center/facility upon approval by the City Building Inspector and Public Works Director.
Civic Uses	1 space for each 3 persons by seating capacity in the largest assembly area.
Clinics	For medical and dental clinics five parking spaces for each doctor engaged at the clinic plus one parking space for each employee
Commercial Uses (i.e. Retail, Office, Banks)	1 per 400 square feet
Hospital	One parking space for each four patient beds, one additional space for each visiting doctor, one additional space for each four general staff on largest shift; loading and unloading space for hospital ambulances and similar motor vehicles not included in the space required herein.





**5.4.2.A Parking Requirements (continued)**

Use	Minimum Off-Street Parking Requirements
Manufacturing/Warehousing/Light Assembly/Industrial	.25 per 1000 square feet of non-office space plus parking for office areas.
Mortuaries and Funeral Homes	One parking space for each vehicle used directly or indirectly in the conduct of the business plus two parking spaces for each three employees and ten spaces for each chapel used by visitors in connection with a funeral.
Public and Private Utilities	1 parking space for each 4 employees, plus one space required for all vehicles used directly or indirectly in the conduct of the utilities business.
Residential – Multi-family	1 per bedroom
Residential - One Family and Two Family	2 per home
Restaurant/Lounge/Private Club	1 space per 100 sq. ft. of eating area plus 1 space per employee
Restaurant, Drive In only and no indoor seating	1 space per 2 employees plus stacking spaces for drive through windows as noted below
Restaurant, Fast Food	1 space per 2.5 seats plus 1 space per 2 employees plus stacking spaces for drive through windows as noted below

- B. Drive-Through Stacking. Drive-through establishments shall provide stacking space for queuing of vehicles awaiting use of drive-through windows. Each stacking space must be eighteen (18) feet long and each lane of stacking spaces must be at least nine (9) feet wide. Lane widths should be delineated with pavement markings. However, individual spaces within the lane need not be marked. The following table denotes the number of stacking spaces required for common drive-through uses. Any drive-through use not listed shall be required to provide at least four (4) stacking spaces per drive-through window. Stacking spaces must be in addition to the required parking spaces and must not be located within a required driveway, internal circulation system, or parking aisle.

**5.2.4 .B Stacking Space Requirements**

Use	Minimum Number of Stacking Spaces Required			
	Before	At	After	Total
Bank or ATM (bay)	3	1	0	4
Restaurant	3	1	1	5
Car wash (self-serve)(per bay)	2	1	2	5
Car wash (semi or automatic)	3	0	2	5
Other Uses*	1	1	1	3

\*Planning Director may determine the specific number depending on lot size, use, site plan, etc

C. Additional Parking

- i. To minimize excessive areas of pavement which depreciate aesthetic standards and contribute to high rates of stormwater runoff, no parking lot shall exceed the minimum parking space requirements by ten (10) percent greater than required except as approved by the Planning Director. In granting additional spaces, the Planning Director shall determine that the parking will be required based on documented evidence of actual use and demand provided by the applicant.
- ii. Off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed in the applicable site plan approval files of the Department of Planning, and placed on public record in the Office of the Clerk of the County Commission of Marion County, WV.
- iii. It is the responsibility of the business owner to maintain current and valid parking as required by this Ordinance. Evidence of such parking is required prior to approval and proof of current leases shall be made available at the request of the Planning Director.

Each leased space shall have a sign noting the business for which the space is reserved. Signs shall be twelve (12) inches wide by eighteen (18) inches tall and shall be mounted between three (3) feet and five (5) feet above the finish surface of the parking stall.

- iv. If the pedestrian access between the off-site parking facility and the use(s) is to cross an arterial street, appropriate safety measures, as determined by the Planning Director and City Engineer, must be in place to ensure pedestrian and vehicular safety.

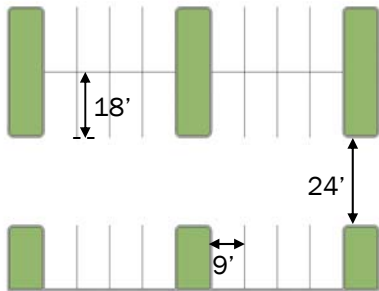
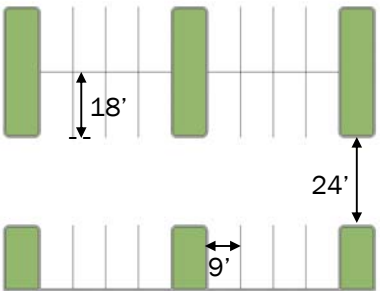
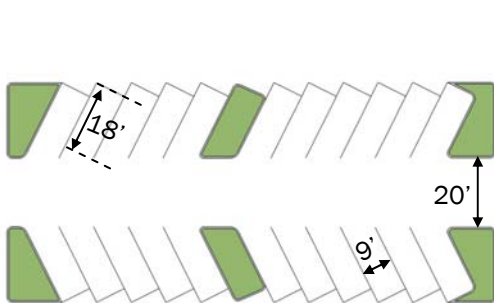
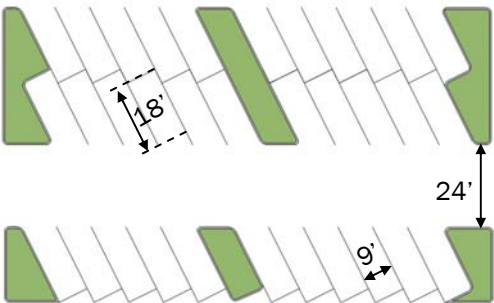
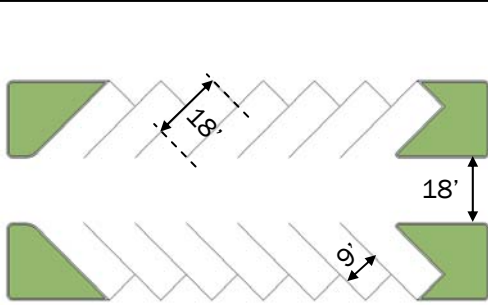
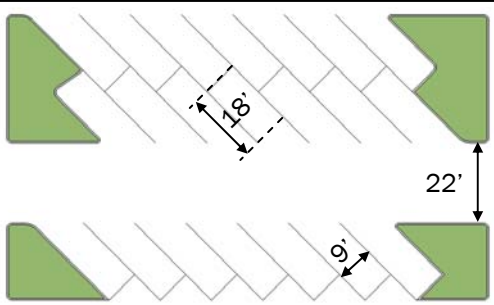
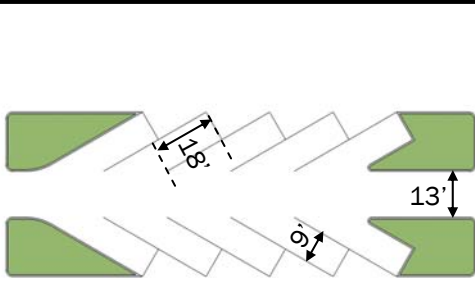
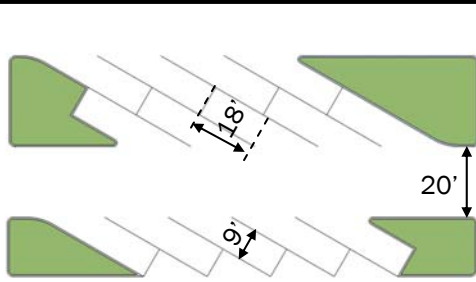

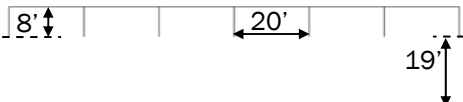
D. Parking Space Dimensions

- i. Parking space dimensions (other than those designed for the disabled) shall be a minimum of eighteen (18) feet long and nine (9) feet wide. Parking spaces shall be dimensioned in relation to curbs or aisles, so long as their configuration, area, and dimensions satisfy the requirements of this Section.
- ii. Parallel parking space dimensions shall be a minimum of twenty (20) feet by eight (8) feet.

- E. Aisle and Driveway Widths. Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

5.4.2.E Aisle and Driveway Widths					
Angle of Parking	0°	30°	45°	60°	90°
	Aisle Width in Feet				
One Way Traffic	13	13	18	20	24
Two Way Traffic	19	20	22	24	24



Parking Layout		
	One Way Traffic	Two Way Traffic
90° Parking		
60° Parking		
45° Parking		
30° Parking		
Parallel Parking		

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©clearzoning

F. Collective/Cooperative (Shared) Parking. The collective provision of off-street parking for two (2) or more buildings or uses is permitted subject to the following:

- i. Where a mix of land uses creates staggered peak periods of parking, shared parking agreements that have the effect of reducing the total amount of needed parking spaces are encouraged. In these cases the required number of parking spaces may be reduced. Retail, office, institutional, and entertainment uses may share parking areas. Except as otherwise provided in this Ordinance, shared parking shall not include the parking required for residential uses.
- ii. Provisions for collective off-street parking would be made by contract between two (2) or more adjacent property owners. The parking area provided on any one (1) lot could be reduced to not less than one-half (1/2) the number of required spaces for the use occupying the lot. The lots shall be interconnected for vehicular passage.
- iii. Written easements which provide for the continued use and maintenance of the parking shall be submitted to the City for approval. Any agreement shall include provisions to address any changes in use which shall be reviewed.
- iv. Whenever possible, collective or cooperative parking arrangements shall utilize shared driveways, shared service drives, cross access drives, and frontage roads to minimize driveways that access an arterial or collector street. Cross access easements, if necessary, shall be submitted to the City for approval.

G. Parking and Storage of Certain Vehicles. Commercial Vehicles on Private Property. The parking of a commercial vehicle in residential zoned districts shall be prohibited, except that one commercial vehicle of not more than three (3) tons capacity may be parked on any lot on which there is located a principal building and is used by an occupant of the premises. This requirement shall not be interpreted to prohibit commercial vehicles from temporary loading and unloading in any residential district.

H. Loading Requirements. Uses and buildings with a gross floor area of 5,000 square feet or more shall provide off-street loading spaces in accordance with the following table provided that loading spaces shall not be required for uses which do not receive or transmit goods or wares by truck delivery.

- i. Location. All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley. No permitted or required loading berth shall be located within thirty (30) feet of the nearest point of intersection of any two streets, nor shall it be located in a required front yard or side yard adjoining a residential use or district.
- ii. Each required off-street loading space shall be of a size not less than that required for an off-street parking space but scaled larger to delivery vehicles expected to be used, logically and conveniently located for bulk pickups and deliveries, and accessible to such vehicles when required off-street parking spaces are filled, provided that the off-street area required for the receipt or distribution by vehicles of materials or merchandise is held to be as follows:
  - a. For local pick-up and delivery trucks: twelve (12) feet in width by thirty (30) feet in length with a forty-five (45) foot maneuvering apron, and a twelve (12) foot height clearance.
  - b. For over-the-road tractor-trailers: fourteen (14) feet in width by sixty (60) feet in length with a sixty (60) foot maneuvering apron, and a fourteen (14) foot height clearance.
- iii. Paving regulations for loading areas shall be in accordance with the paving regulations for parking areas as set forth in the Development Standards Section. Drainage regulations shall be in accordance with the City's Stormwater Management Ordinance and other City ordinances.



### 5.4.2.H Required Loading Spaces

Use Description	Floor Area in Square Feet	Number of Loading Spaces Required
<u>Type I:</u> Manufacturing, distribution, wholesaling, storage, and similar uses	5,000 - 25,000	1
	25,001 - 60,000	2
	60,001 - 100,000	3
	Each 50,000 above 100,000	1 Additional Space
<u>Type II:</u> Office buildings, hotels and motels, retail sales, restaurants, hospitals, institutions, and similar uses	5,000 - 60,000	1
	60,001 - 100,000	2
	Each 20,000 above 100,000	1 Additional Space

- I. Barrier Free Parking. Disabled parking shall conform to all requirements of the Americans with Disabilities Act.

## 5.5 LANDSCAPING REQUIREMENTS

1. Purpose and Intent. The purpose of this Section is to establish minimum standards for the provision, installation, and maintenance of landscape plantings in order to achieve a healthy, beautiful, and safe community.

These landscape requirements have been established to achieve the following:

- A. Conserve the value of land and building.
- B. Integrate various elements of a site to attain and maintain attractive properties.
- C. Blend harmonious land uses, buffer incompatible land uses and define outdoor and architectural spaces.
- D. Control soil erosion by slowing or constraining the effects of wind and water.
- E. Minimize visual pollution; minimal screening provides an impression of separation of spaces and more extensive screening can entirely shield the visual effects of an intense land use from a less intense land use.
- F. Establish a greater sense of privacy from visual or physical intrusion of intense land uses, the degree of privacy varying with the intensity of the screening.
- G. Safeguard the public health, safety and welfare, and preserve the aesthetic qualities and enhance character of the City of Fairmont.

The landscape requirements of this Section are considered the minimum necessary to achieve the intent noted above. In several instances, the standards or requirements are intentionally flexible to encourage adaptability to specific circumstances and creative design. Applicants are encouraged to provide additional landscaping to improve the function, appearance and value of their property.

2. General Provisions/Applicability

- A. These landscape regulations shall apply to two-family, multi-family, commercial, office, industrial, and institutional development. Previously approved development need not comply unless new site development approval is being sought.
- B. If a proposed addition or renovation to an existing structure equals or exceeds 150% of the gross square feet of the structure, the site must be brought into compliance with the landscaping requirements of this Section; provided, that where it is clearly demonstrated that compliance with this Section will reduce the minimum number of required parking spaces for the use, compliance with this Section shall be required only to the degree that the minimum parking requirement can still be met.

3. Enforcement

- A. Wherever site plan review is required by this Ordinance, a Landscape and Screening Plan shall be a required part of such site plan. No permanent Certificate of Occupancy shall be issued without completion of all landscaping shown on an approved Landscape and Screening Plan.





- B. In the event that the season is not appropriate, a temporary Certificate of Occupancy may be issued for a period of one (1) year when weather conditions do not permit landscape installation at the time of occupancy.
  - C. Failure to implement an approved Landscape and Screening Plan, including preservation of existing features, or to maintain the landscaping as long as incompatibility of adjoining uses exists, shall be a violation of this Ordinance subject to the penalties outlined in this Ordinance.
4. Landscaping and Screening Plan. As a component of a required site plan, a Landscape and Screen Plan shall show the entire lot to scale (minimum 1"=50') contain the following elements:
- A. The name, address, and phone number of the owner, developer, and plan preparer as well as the date the plan was prepared, the scale of the drawings, and north arrow;
  - B. The location, quantity, size, common name, and scientific name of all proposed planting materials;
  - C. Planting and installation details as necessary to ensure conformance with all required standards and planting specifications; and
  - D. If applicable, the design of fencing and other significant accessory structures used for screening.
5. Preservation of Existing Features
- A. Trees and shrubs<sup>□</sup> already existing on land subject to the provisions of this Article should be preserved wherever feasible.
  - B. Existing trees that are preserved will contribute to the required landscaping. For each tree that is preserved that is greater than eight (8) inch caliper and is found on the approved list, the amount of new trees to be installed shall be reduced by two (2) trees.
  - C. Tree protection barriers shall be specified on the Landscape and Screening Plan and shall be placed at or beyond the drip line<sup>□</sup> of trees to be protected. These barriers shall remain in place during heavy construction on the site, and no vehicle, machinery, tools, chemicals, construction materials, or temporary soil deposits may be permitted within the barriers, nor may any notice or other object be nailed, stapled, or posted on protected trees.
6. General Landscaping Requirements
- A. All land areas that are not covered with buildings and pavement or used for agricultural purposes shall be appropriately landscaped in accordance with the requirements of this Section. Landscaping shall be provided in the areas specified and shall be of the minimum intensity specified below.
  - B. The scale and nature of landscape materials shall be appropriate to the size of the structures and the available space. Materials shall be located to avoid interference with overhead and underground utilities and utility easements or vehicular or pedestrian movement and visibility. Growth characteristics should be considered carefully.
  - C. All trash dumpsters, trash pads, loading, building service, and outside storage areas shall be screened from residential uses and public streets. Such screening may be achieved by using a minimum six (6) foot high, completely opaque fence or wall, a six (6) foot high berm, or a six (6) foot high evergreen<sup>□</sup> screen. Height of screen shall be measured from the grade of the nearest street.
  - D. Grass and other vegetative ground cover shall be used for all open space<sup>□</sup>, including parking lot islands, except for:
    - i. Decorative mulch planting beds containing trees and/or shrubs<sup>□</sup>.
    - ii. Inert stabilization in areas subject to severe runoff, erosion, or ponding.
  - E. Where stone or other inert materials are to be used for ground cover, they shall be specifically identified on the Landscape and Screening Plan. Any area not so designated shall be required to have grass or vegetative ground cover.
  - F. All landscaping shall conform to the regulations established for clear vision areas<sup>□</sup> to maintain safe sight distances at intersections and points of access as designated in this Ordinance.
  - G. All landscaped areas<sup>□</sup> adjacent to off-street parking spaces shall be protected from encroachment or intrusion of vehicles (e.g. wheel stops).
  - H. In no case may a tree or shrub<sup>□</sup> be planted within a storm drainage, sewer, water, or utility easement.





## 7. Parking Lot Landscaping Requirements

### A. Interior Coverage Requirements

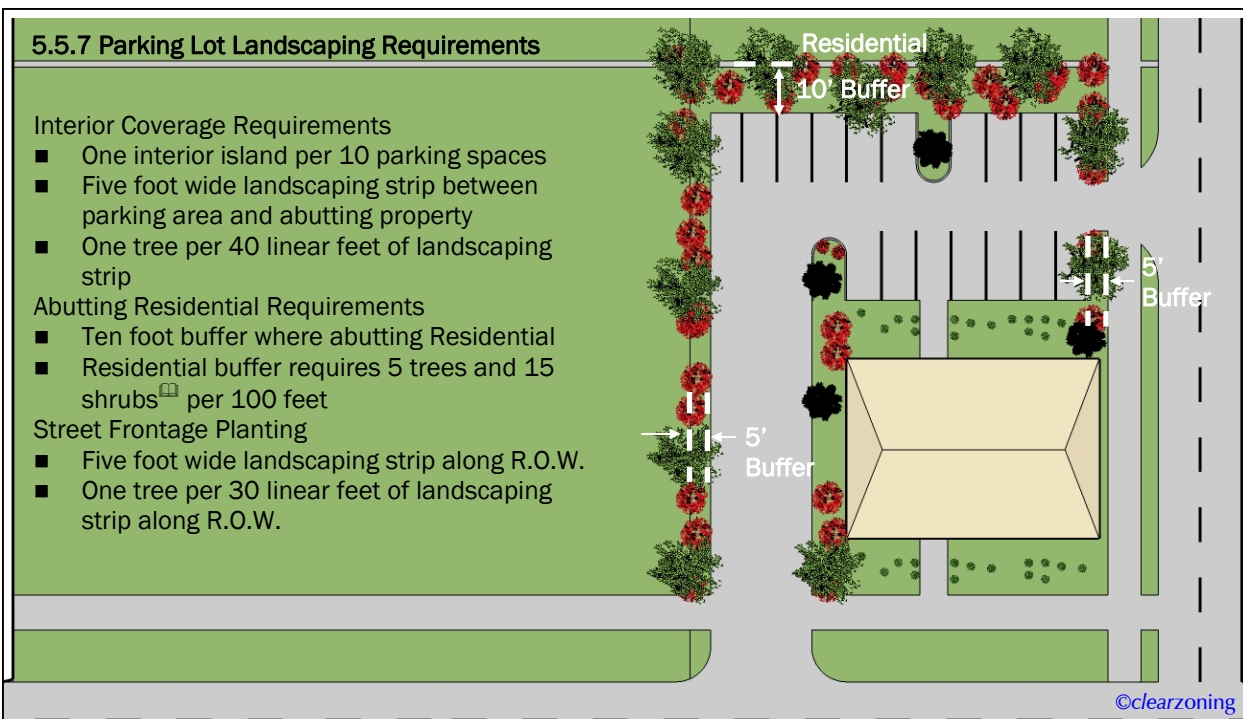
- i. One interior island shall be provided for every ten (10) spaces. Each interior island shall also be not less than five (5) feet in width and extend along the entire length of the space. The location of the interior islands should be staggered to avoid a regimented appearance. At least one (1) tree shall be provided within each interior island.

### B. Peripheral Coverage Requirements

- i. Peripheral landscaping shall be required along the side of a parking lot, driveway, or loading area that abuts adjoining property that is not a right-of-way. See [Section 5.5.7](#) for non-residential uses adjacent to residential uses for buffer area requirements.
- ii. A landscaping strip at least five (5) feet in width shall be located between the parking area and the abutting property lines, except where driveways or other openings may be required.
- iii. At least one (1) tree for each forty (40) linear feet shall be planted in the landscaping strip in addition to other planting materials.

### C. Street Frontage Planting Requirements

- i. In addition to the requirements of Sections a and b above, landscaping shall be provided along all property boundaries abutting the right-of-way of any street.
  - ii. A landscaping strip five (5) feet in width shall be located along the right-of-way except where driveway or other openings may be required.
  - iii. One tree shall be planted for each thirty (30) linear feet of the landscaping strip in addition to other planting materials.
- D. Maintenance. The owner and their agencies shall be responsible for providing, protecting and maintaining all landscaping in healthy and growing conditions, replacing it when necessary, and keeping it free from refuse and debris.
- E. Clear Vision Area<sup>1</sup>. No landscaping, tree, fence, wall or similar item shall be maintained in the vicinity of any corner, street, intersection or accessway intersecting a public right-of-way that the Public Works or Public Safety determines is an obstruction, extends into necessary sight-lines or constitutes a traffic hazard.



## 8. Buffer Yard Landscaping Requirements

- A. New non-residential and/or multi-family development adjacent to single-family residential property (existing or zoned) shall provide a landscape buffer yard ten (10) feet wide planted with five (5) medium to large trees and fifteen (15) shrubs<sup>□</sup> per 100 linear feet of buffer yard between the non-residential or multi-family uses and single-family residential uses. Nothing shall be construed that this requirement shall dictate layout of landscaping material. The entire length shall be evaluated and required material provided. This requirement may supersede the minimum setback requirement for the zoning district. Preservation of existing vegetation is preferred.
- B. The use of a ten (10) foot landscaped buffer area shall remain the preferred method of buffering non-residential and multi-family residential developments from single-family residential uses. However, where a natural buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height so as to continually restrict a clear view beyond said buffer yard may be substituted in whole or in part for a natural buffer provided its specifications are approved by the Planning Official.
- C. Non-residential or multi-family developments existing at the time of adoption of this Ordinance are exempt from this requirement except when expansions to those facilities meeting the criteria noted under [Section 5.5.2.B](#) above.
- D. An earth berm may be used in combination with any of the above types of screening, but not more than two-thirds (2/3) of the required height of such screening may be provided by the berm. The berm shall be installed with a slope of 1:3 and a minimum crest of two (2) feet.
- E. All screening shall follow the lot line of the lot to be screened or be so arranged within the boundaries of the lot as to substantially hide from adjoining properties the building, parking, loading areas or other activity required to be screened

- F. In all districts, garbage cans and trash receptacles must be suitably screened from view from adjacent streets or properties prior to garbage pick-up.

9. Modifications. Under conditions where a strict interpretation of requirements may be either physically impossible or create practical difficulties, an alternative compliance procedure may be used to maintain the spirit—rather than the letter—of the law. The proposed solution must equal or exceed standard landscaping requirements as a percentage landscaped area<sup>□</sup>. Requests to the Planning Director for use of alternative landscaping schemes may be justified only when one (1) or more of the following conditions apply:

- The sites involve space limitations or unusually shaped parcels.
- Topography, soil, vegetation, or other site conditions are such that full compliance is impossible or impractical.
- Due to a change of use of an existing site, the required buffer yard is larger than can be provided.
- Existing utility lines or easements complicate the placement of required plant materials.
- Low impact development designs to meet Stormwater requirements are being used on the site. These may include items such as rain gardens, bio-swales and similar treatments.
- The applicant must provide a justification statement that describes which of the requirements established by the Landscaping Ordinance will be met with modifications, which project conditions justify using alternatives, and how the proposed measures equal or exceed normal compliance.

- A. Where compliance is required as a result of change in use or expansion of an existing building and compliance with this Section will necessitate removal of existing pavement, the Planning Director may approve a reduction of minimum planting areas, provided that proposed plantings, screens, and other landscape features are substantially equivalent to the minimum requirements in terms of landscaping.



- B. After initial approval of the landscape plan the Planning Director may approve any substitute landscape proposal that he/she deems to be equivalent to the approved landscape.

Occasionally, plant substitutions for species specified on approved landscape plans are required due to seasonal planting problems and a lack of plant availability. Minor revisions to planting plans can be approved by the Planning Director if there is no reduction in the quantity of plant material, no significant change in size or location of plant materials, and if the substitute plants are of the same general category and have the same general design characteristics as the plants originally approved. Proposed materials must also be compatible with the microclimate of the site to ensure healthy plant growth.

#### 10. Installation and Maintenance

- A. Plant materials used in conformance with the provision of this Chapter shall conform to the standards of the American Association of Nurserymen and shall have passed any inspection required under state regulations. Trees shall be balled and burlapped or in containers. Shrubs<sup>■</sup>, vines and ground covers can be planted as bare root as well as balled and burlapped or containers. All trees shall be measured from the top of the root ball to the top of the tree mass.

- i. Deciduous<sup>■</sup> Trees. Deciduous<sup>■</sup> trees shall have a minimum caliper of at least two and one-half (2½) inches with a single central leader, for large and medium trees, conforming to acceptable nursery industry procedures at the time of planting. If deciduous<sup>■</sup> trees are to be used for screening purposes, additional materials listed in this Section must be used to create a dense screen.
- ii. Evergreen<sup>■</sup> Trees. Evergreen<sup>■</sup> trees shall be a minimum of six (6) feet in height at the time of planting and shall be unsheared, full and branched to the ground. Evergreen<sup>■</sup> plantings shall be designed to provide an effective, dense screen within four (4) years of planting. It is recommended that evergreen<sup>■</sup> trees be planted no further than ten (10) feet on center to assure an effective screen.

- iii. Shrubs<sup>■</sup> and Hedges. Shrubs<sup>■</sup> and hedges to be used for off-street parking and screening purposes shall be at least twenty-four (24) inches in height at the time of planting. Shrubs<sup>■</sup> and hedges used for landscaping purposes shall be at least eighteen (18) inches in height at the time of planting. All shrubs<sup>■</sup> and hedges shall be designed to provide an effective, dense screen and mature height of at least five (5) feet within four (4) years after the date of the final approval of each planting. The height at installation of the planting shall be measured from the level of the surface of the plant base at the edge closest to the screening.

- iv. Grass or Ground Cover. Grass shall be planted in species normally grown as permanent lawns. In swales or other areas subject to erosion, solid sod, erosion reducing net, or suitable mulch and temporary seeding shall be used for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Grass shall be sown or placed in any area not landscaped or paved. Ground cover shall be planted in such a manner as to provide seventy-five (75) percent complete coverage after two (2) growing seasons.

- B. After cultivation, all plant materials shall be mulched with a two (2) to three (3) inch layer of shredded bark, peat moss, or another suitable material over the entire area of the bed.
- C. The owner of the premises shall be responsible for the maintenance, repair, and replacement of all landscaping materials on the premises at the owner's expense. All landscape areas shall be kept free of refuse and debris. Fences, walls, and other barriers shall be maintained in good repair. It is the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs<sup>■</sup>, or parts thereof, which overhang or interfere with line of sight, traffic control devices, public sidewalks, rights-of-way, or property owned by the City. The City shall have the authority to order the removal of any such trees or shrubs<sup>■</sup>.

11. Approved Street Tree<sup>☐</sup> and Shrub<sup>☐</sup> List. The “Approved Street Tree<sup>☐</sup> and Shrub<sup>☐</sup> List” identifies the approved species that may be used to meet street tree<sup>☐</sup> and landscaping requirements set forth herein. Plant materials proposed other than those listed in the table may be approved by the Planning Director.

5.5.11 Approved Street Tree <sup>☐</sup> and Shrub <sup>☐</sup> List	
Approved Trees	
Genus/Species	Common Name
Medium to Large Trees - suitable for urban environments, but not under wires	
Acer rubrum & cvs.	Red Maple Cultivars
Betula spp.	Birch
Celtis occidentalis	Hackberry
Cladrastis lutea	Yellowwood
Corylus colurna	Turkish Hazelnut
Fagus spp. cvs	Beech
Fraxinus americana	White Ash
Fraxinus pennsylvanica	Green Ash
Ginkgo biloba	Ginko Species - Male
Gleditsia triacanthos var. inermis	Thornless Honeylocust
Liriodendron tulipifera	Tulip Tree
Nyssa sylvatica	Black Gum
Platanus acerfolia	London Planetree
Quercus alba	White Oak
Quercus bicolor	Swamp White Oak
Quercus muehlenbergii	Chinkapin Oak
Quercus palustris	Pin Oak
Quercus phellos	Willow Oak
Quercus rubra	Red Oak
Quercus shumardii	Shumard Oak
Taxodium distichum	Bald Cypress
Tilia cordata & cvs.	Littleleaf Linden
Zelkova Serrata	Zelkova



### 5.5.11 Approved Street Tree<sup>☐</sup> and Shrub<sup>☐</sup> List (continued)

#### Approved Shrubs<sup>☐</sup>

Genus/Species	Common Name
Aronia arbutifolia 'Brilliantissima'	Red Chokeberry
Chaenomeles Species	Oriental Quince
Cotoneaster spp	Cotoneaster Species
Cryptomeria	
Forsythia x intermedia	Showy Border Forsythia
Hydrangea quercifolia	Oakleaf Hydrangea
Ilex glabra	Inkberry
Ilex M. 'Blue Princess'	Blue Princess Holly
Ilex verticillata	Winterberry Holly
Juniperus chinensis	Chinese Juniper
Kolkwitzia amabilis	Beauty Bush
Myrica pennsylvanica	Northern Bayberry
Syringa patula 'Miss Kim'	Miss Kim Lilac
Syringa meyeri 'Paliban'	Dwarf Korean Lilac
Viburnum spp.	Viburnum Species

#### Small Trees<sup>☐</sup> - suitable for planting under low overhead utility wires or restricted spaces

Alnus glutinosa	European Alder
Amelanchier spp.	Serviceberry
Carpinus spp.	Hornbeam
Chionanthus virginicus	Fringetree
Cornus spp.	Dogwood
Cotinus obovatus	American Smoke Tree
Crataegus spp.	Hawthorn
Halesia carolina	Silverbell
Ostrya birfiniana	American Hophornbeam
Oxydendrum arboretum	Sourwood
Prunus spp. cvs.	Ornamental Cherry
Stewartia ovata	Mountain Stewartia
Syringa reticulata	Japanese Tree Lilac

#### Evergreen<sup>☐</sup> Trees

Cupressocyparis leylandii	Leyland Cypress
Cryptomeria japonica	Japanese Cedar
Picea abies	Norway Spruce
Picea omorika	Serbian Spruce



### 5.5.11 Approved Street Tree<sup>☐</sup> and Shrub<sup>☐</sup> List (continued)

#### Approved Trees

Genus/Species	Common Name
<b>Evergreen Trees</b>	
Picea pungens	Colorado Blue Spruce
Pinus sylvestris	Scots Pine
Pinus strobus	Eastern White Pine
Pseudotsuga menziesii	Douglas Fir

#### Trees to Avoid

Acer negundo	Boxelder
Acer saccharinum	Silver Maple
Ailanthus altissima	Tree of Heaven
Eleagnus umbellata	Autumn Olive
Koeleruteria paniculata	Goldenrain Tree
Pryus calleryana 'Bradford'	Bradford Pear
Phellodendron amurense	Amur Cork Tree

### 5.6 LOT STANDARDS.

Unless otherwise specified, the following provisions shall apply throughout the City of Fairmont regardless of the underlying regulating district.

1. No yard or lot existing upon adoption of this Zoning Ordinance shall be reduced in size or area below the minimum requirements of the regulating district. Yards or lots created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance.
2. Every building erected, moved, or structurally altered shall be located on a lot conforming to the requirements of the regulating district.
3. Mixed-use or non-residential buildings on corner lots shall be considered to have two (2) front yards and shall utilize the minimum front setback for each facade. Single and two-family residential structures may reduce the required yard setback for one (1) side of a corner lot to a minimum of eight (8) feet or the RBL, whichever is greater.
4. All non-residential structures on a lot shall have access available from a public street for use by service or emergency vehicles.
5. Generally, all buildings shall front directly upon a street in a manner that creates a public space that is conducive to pedestrian use. With the provision of open alley access, lots may

front upon a central plaza, courtyard or a square, but shall be of sufficient design to allow for the provision of emergency services. Street frontage elevations for interior facing buildings shall maintain the appearance of fronting on the main roadway by use of architectural features that gives the appearance that the building is facing the street.

### 5.7 ENCROACHMENTS

1. Balconies, stoops, stairs, chimneys, open porches, bay windows, and raised doorways are permitted to encroach into the front setback a maximum of eight (8) feet. Open decks and patios are permitted to encroach into the rear setback to within five (5) feet of the property line.
2. For commercial and industrial districts outdoor street and patio dining is permitted to encroach into the right-of-way; provided however, that pedestrian, handicap access, and automobile traffic will not be obstructed. Arcades are permitted to encroach into the right-of-way with permission from the Board of Zoning Appeals.
3. A ramp meeting ADA requirements may be placed forward of the RBL or in the required setback, provided that it is setback a minimum of three (3) feet from any lot line.





## 5.8 FENCES AND VEGETATIVE SCREENING

1. Residential Uses and Residential Districts: Hedges shall be planted at least three (3) feet from the property line. Garden walls shall be constructed at least one (1) foot from the property line. Fences may be placed on the property line. Front yard fences shall not exceed four (4) feet in height and shall be constructed of split rail, wooden picket, chain link, or other material as determined by the Building Inspector which will not present or create a solid visual obstruction. Side and rear yard fences shall not exceed six (6) feet in height. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.
2. Non-residential Uses within non-residential districts: Hedges shall be planted at least three (3) feet from the property line. Garden walls shall be constructed at least one (1) foot from the property line. Front yard fences are excluded. Side, court and rear yard fences shall not exceed eight (8) feet in height unless otherwise approved by the Planning Department. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.
3. Fences are only permitted as an accessory structure with permitted uses and may not be placed on a vacant lot.

## 5.9 REFUSE CONTAINMENT AND MECHANICAL EQUIPMENT

1. Residential Districts: Trash containers, mechanical equipment shall be located in the side or rear yard and shall be screened from view. Mechanical equipment for single-family residential uses shall be setback a minimum of five (5) feet from the property line. See [Section 5.5.6.C](#) for screening requirements.
2. Non-residential Districts: Trash containers and mechanical equipment, loading docks, loading facilities, and outdoor storage as a conditional use shall be located in the side or rear yard and shall be screened from view. Mechanical equipment for non-residential uses shall be setback a minimum of three (3) feet from the property line. See [Section 5.5.6.C](#) for screening requirements.

## 5.10 ACCESSORY BUILDINGS AND STRUCTURES

1. Only one (1) principal building and its customary accessory building(s) shall be located on any lot, except in districts that permit a lot to contain both residential and non-residential uses in one or more principal structures or within the same structure.
2. In the case of a corner lot, no wall of an accessory building shall be nearer to a side street than the side line of the main building.
3. Accessory buildings attached to the principal building by an approved breezeway or similar structure shall meet all yard requirements for a principal building.
4. Accessory buildings, pools, and other similar structures shall be constructed in the rear yard only. The Planning Department may permit the placement of an accessory building in a side yard, if no practical alternative exists, provided that the building meets the provisions of [Section 5.2 Architectural Requirements](#) are met.
5. The following uses are permitted within accessory structures: parking, gazebo, pool house, equipment storage, artist studio space, sauna, and workshop, conservatory, and satellite dishes.
6. The aggregate floor area of all accessory structures shall not exceed one-half ( $\frac{1}{2}$ ) the total floor area of the principal structure.
7. Satellite dishes may not exceed two (2) feet in diameter.
8. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, and pump covers may be placed in any front, side or rear yard. Notwithstanding any provisions of this Section to the contrary, doghouses and dog related structures shall be placed in rear yards only.
9. Where permitted within non-residential districts the following shall apply:
  - A. Outdoor sales shall be located in the side or rear yard.
  - B. All ancillary equipment or facilities (gasoline pumps, car washes, etc.) shall be to the side or rear of the principal building.
  - C. Main pedestrian access shall be in the front half of the building nearest the fronting street.
  - D. Bays and garage entrances may not face the fronting street.

- E. Loading docks and loading facilities shall be located in the rear yard and shall be screened from view.

#### 5.11 REQUIRED YARD USE BY ANOTHER BUILDING

No part of a yard, court or open space provided about any building or any structure for the purpose of complying with the provisions of this Zoning Ordinance shall be included as a part of a yard, court or other open space required under this Ordinance for another building or structure.

#### 5.12 STRIPPING OF TOP SOIL.

No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale or for use other than on the premises from which the same is taken except in connection with the construction or alteration of a building or site improvements on the premises and excavation or grading incidental thereto.

**1**  
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**1** Purpose and  
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# *Article 6.0*

## *Development Procedures*



Article 6.0    Development Procedures  
6.1            [Site Plan Review](#)

# 6.0 Development Procedures

## 6.1 SITE PLAN REVIEW

1. Purpose. The site plan review process will allow the City to review the arrangement, layout, use interrelationships and neighborhood impacts of sites intended for development or redevelopment and to ensure the aesthetic quality of such design to conform with the character of the neighborhood. The issuance of a Certificate of Occupancy does not waive the required improvements outlined on an approved site plan or forgo any other applicable code regulation, law or ordinance.
2. Administration/Development Review Committee. The Development Review Committee (DRC) shall be organized to generally ensure compliance by site owners with all applicable codes, regulations, laws, ordinances and plans and to coordinate examination of development proposals to ensure that all City requirements, established by ordinance, resolution or policy, have been met without conflict. The DRC shall have all the power and duties specifically provided for herein. The requirements of the Review Committee do not waive the requirements of any other applicable code regulations, law or ordinance.
3. Administration/Organization and Membership.
  - A. The Development Review Committee shall consist of, but not be limited to, the following:
    - i. Planning services;
    - ii. Building services;
    - iii. Fire services;
    - iv. Police services;
    - v. City Engineer;
    - vi. Transportation and streets;
    - vii. Storm water.
  - B. The City Planner or his/her designee shall be the DRC Chair.
  - C. The DRC shall have the authority to establish written rules and regulations for purposes of enforcing and implementing this Article.
4. Administration Powers and Duties.
  - A. The DRC shall review and approve all site plans in accordance with this [Section 6.0](#) and all subdivisions in accordance with [Section 7.3](#).
  - B. The Development Review Committee shall determine from data submitted whether or not site plans meet the requirements of codes, regulations, ordinances, policies and resolutions.
  - C. The Development Review Committee, after review of the site plan, shall inform the owner in writing of any technical compliance problems in the plan. Compliance and enforcement shall be as provided in the particular code, regulation, or ordinance.
  - D. DRC may approve, approve with conditions or deny any site plan based on subsection (a) above.
  - E. The DRC shall meet on a weekly basis, as needed.
5. Site Development Plan Required.
  - A. All buildings, structures, or outdoor uses of land which shall be used, constructed, enlarged, altered, or moved in any zoning district shall obtain site plan approval, with the exceptions listed below in subsection (c).
  - B. Site plan approval shall also be required in all districts for:
    - i. Uses subject to conditional use permit approval which are reviewed according to [Article 4, Use Standards](#).
    - ii. Any amendment of a previously approved site plan.
    - iii. New parking lot or expansions of existing parking lots, with a total of ten or more parking spaces.
    - iv. Any substantial change in use or class of use which requires additional parking and/or screening, as determined by the City Planner.
    - v. Any structure formerly used as a residence proposed for conversion to non-residential use.
    - vi. Any non-residential structure that has been vacant for one year or more.
    - vii. All development within any Special Use district.
  - C. Specifically excluded from the provisions of this article are:
    - i. One-family dwellings or two-family dwellings on a single lot and its accessory structures.

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- ii. Renovations that are 100% internal to an existing building or structure except for uses defined by [Section 6.1.5.B.i, v, or vi](#) above.
  - iii. Exterior renovations to an existing building or structure that do no increase the outer envelope of said building or structure.
  - iv. Repair and replacement of existing driveways, curb cuts, aprons, and sidewalks.
  - v. Installation of signs or fences.
- 6. Approval Requirements.
  - A. The owner shall comply with all applicable requirements and regulations.
  - B. All improvements shown on an approved site plan must be completed prior to issuance of the Certificate of Occupancy. The DRC chair shall coordinate all information dissemination.
  - C. A Certificate of Occupancy may be granted for a partial development if the partial development is consistent with phasing shown on an approved site plan. Time for completion of all phases must be established at the time of initial site plan.
  - D. The site plan must conform to any recorded plat or filed master plan for that same property or subdivision of which it is a part.
  - E. Fees for site plan applications are due and payable at time of application and are non-refundable.
  - F. An appeal to any decision made by the DRC chair and/or the Development Review Committee may be made to the appropriate board or commission (BZA, ICC, City Council, or Sanitary Board). Application for appeal shall be made in writing to the appropriate City departments in accordance with applicable City or State Codes.
- 7. Expiration of Approval Requirements. DRC approval of a site plan shall expire if any of the following circumstances occurs:
  - A. The site plan is not submitted by the applicant for stamping and signature by the DRC within three calendar months of site plan approval, with or without modifications.
  - B. A complete application for a building permit is not submitted within one (1) calendar year of the stamping and signing of the site plan by the DRC.
  - C. Upon prior written request to the DRC, including a statement of justification for the requested time extension, the time period for submission of the site plan or submission of the complete application for a building permit may be individually extended for a maximum period of six (6) calendar months from their otherwise specification termination dates.
- 8. Application and Processing of Review Site Plans.
  - A. Pre-Application Meeting: Prior to a formal submission, the applicant should meet in person with the DRC Chair or the committee as a whole to discuss the proposed site plan. The intent of such a conference is to enable the applicant to inform the DRC of the proposal prior to the preparation of a detailed site plan and for said Department to review the basic site design concept, advise the applicant as to potential problems and concerns and to determine generally the type of information to be shown on and submitted with the site plan. The Applicant is encouraged to submit a sketch plan for review during a pre-application meeting.
  - B. Site Plan Application: The applicant shall submit nine (9) copies of the site plan and appropriate fee to the Planning Department at least six (6) business days before the next regularly scheduled DRC meeting. Incomplete plans will not be processed or placed on the DRC agenda. The copies will be forwarded to the Site Development Review Committee for review.
- 9. Form and Content.
  - A. A site plan shall be prepared by a registered architect, licensed landscape architect, licensed land surveyor, licensed engineer, or professional planner.
  - B. Site plans submitted must show the following items. All drawings shall be to scale, clear and complete to obtain site plan approval.



- i. The site plan shall not exceed twenty-four (24) inches by thirty-six (36) inches nor be less than eleven (11) inches by seventeen (17) inches. The site plan shall be drafted at an appropriate engineering scale to ensure that all information can be read and interpreted.
- ii. Property lines of the subject site and all adjoining parcels platted or unplatted. Platted and unplatted parcels shall be identified with the legal description and the owner's name.
- iii. All property line boundaries with dimensions and building setbacks.
- iv. Existing and proposed streets, alleys, lots, reservations, public and private easements and areas dedicated to public use. Easements shall be labeled as to type and, if recorded, reference to deed book and page number. In addition, the site plan shall show all driveways, rights-of-way, and street intersections that are adjacent to or directly across from the subject site.
- v. The location and design of all means of vehicular access to and from the site onto public right-of-way, indicating the location and size of all driveways (including those on the adjacent property and the opposite side of the street), curb return radii, curb cuts and location and size of sidewalks and ambulatory ramps when and where required. For any development abutting frontage roads, all entrance and exit ramps shall be shown on the vicinity map.
- vi. Location of existing and proposed buildings-number of stories, gross square footage of buildings; mechanical equipment; retaining walls, fences, culverts, bridges, roadways, etc. The structures to be removed or abandoned shall be shown with dotted lines.
- vii. Location of existing and proposed storm drainage structures including storm sewers, grates, inlets, detention ponds, etc., with pipe sizes, grades and direction of flow and associated drainage easements, if any.
- viii. Limits of existing 100-year flood surface elevations. Identify the limits of building encroachments and earth fill within this area.
- ix. Location of existing and proposed utilities (water, sanitary sewer, cable television, gas, electric and telephone) with service sizes, tap and meter locations, service types, grades and direction of flow. Also, related easements that will accommodate more than one utility shall be shown and described.
- x. Location of power poles, guy wires, pad mount transformers, and other major electrical equipment.
- xi. Location of existing and proposed fire hydrants and the vehicle lay-of-hose distance.
- xii. Location of existing and proposed contour lines with spot elevations for proposed top-of-curb and parking lot slabs. The City Engineer will determine the extent to which this information will be shown.
- xiii. Location and screening or other description to indicate control and handling of solid waste. Indicate location, screening and size of dumpster pad when dumpster is to be used.
- xiv. The planned use or uses of the site.
- xv. The location and design of any off-street parking areas, including handicapped parking and loading areas, showing size and location of spaces, bays, isles, ramps and barriers in compliance with City standards and West Virginia Accessibility Standards. All customer parking areas must be clearly defined on the site plan and must be separate from areas to be used for display.
- xvi. Name of development, legal description of property including address of property, vicinity map and site plan oriented with north arrow, scale, acreage name and address of record owner and engineer, draftsman, architect and land planner.
- xvii. Zoning designation as determined by the official Zoning Map.

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xviii. Landscaping plan as required by [Section 5.5](#).

xix. Area designated for placement of debris during construction, wash out area for concrete trucks and new construction staging area.

xx. Location and pavement type for temporary access for vehicles during construction.

xxi. Location of all waste water pre-treatment devices and sampling well, as applicable.

xxii. All existing and proposed signage, including height, square footage and setbacks.

xxiii. Architectural facade renderings which meet the requirements of [Section 5.2](#).

xxiv. Additional information or engineering data, in such form and content as necessary, to determine that the site plan meets the standards of the City.

10. Waiver of Form and Content Requirements. The DRC shall have the authority to, when reasonable, waive any requirements for the approval, approval with modifications, or disapproval of site plans. Any such waiver may be exercised in the event any such requirements are found not to be requisite in the interest of public health, safety, or general welfare or inappropriate to a particular site plan.

11. Revision of Site Plan After Approval. No changes, modifications or revisions shall be made to any site plan after approval has been given by the DRC, unless said changes, erasures, modifications or revisions are first submitted to and approved by the Committee. Minor changes correcting an error of measurements, acreage, dimensions or other similar situation may be approved by the DRC Chair.

12. Consultation with Other Agencies, Departments, and Consultants.

A. In its review of an application for site plan approval, the DRC may consult with or require the applicant to consult other City officials, the City's designated private consultants, and with representatives of county, state and federal agencies, as needed.

B. Reasonable costs incurred by the City for private consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the application fee required.

13. Fees. The fee for site plan review is seventy-five dollars (\$75.00) for the initial one-hundred thousand dollars (\$100,000) of the project and an additional five dollars (\$5.00) per one-hundred thousand dollars (\$100,000) thereafter.

14. Bonding. Bonding shall be submitted as required by applicable City and State Code regulation, law or ordinance.

# *Article 7.0*

## *Subdivision Regulations*

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# 7.0 Subdivision Regulations

## 7.1 GENERAL PROVISIONS

1. Policy and Purpose. It is declared to be the policy of Council and the Municipal Planning Commission of the City, to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the City. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood or other menace, such as location on the active trace or in the currently active zone or zones of faults or other soil conditions which would lead to structural defects or damage to land improvements. It also means that proper provisions should be made for drainage, water supply, sewage and other needed improvements. All proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties. The proposed streets shall compose a convenient system conforming to the Official Map, if such exists, and shall be properly related to the proposals shown on the Comprehensive Plan, and shall be of such width, grade and location as to accommodate the prospective traffic and to facilitate fire protection. Proper provisions shall also be made for open space for parks and playgrounds.
2. Scope. These Subdivision Regulations apply to the division of land into two or more lots for the purpose of transfer of ownership or building development, to the redevelopment and replatting of land, to the design, construction and improvements on the land in subdivisions and to land composed of adjacent parcels or lots when such are replatted, changed as to dimension or size or used collectively for subdivision purposes or, if a new street is involved, any division of a parcel of land.
3. Approving Agency. In accordance with West Va. Code 8A-5-1, a certified copy of the Comprehensive Plan and any ordinance and amendments thereto containing provisions for subdivision control and the approval of plats and replats shall be filed with the Clerk of the County Commission; thereafter the Municipal Planning Commission shall have exclusive control over the approval of all plats involving land covered by such municipal plan and ordinance. The Commission shall have a seal and when affixed to a final plat shall indicate the approval of the City of all subdivided land from the effective date of this Section. Nothing

herein shall be construed as affecting the validity of subdivisions heretofore approved and so indicated by the signature of the Mayor.

4. Application of Regulations. No owner shall subdivide any tract of land which is located within the City and adjoining area over which it may lawfully exercise any jurisdiction except in conformity with the provisions of these Subdivision Regulations.

## 7.2 ADMINISTRATION AND ENFORCEMENT

1. Recording of Plat. No plat of any subdivision is entitled to be recorded in the County Clerk's office or have any validity until it has been approved in the manner prescribed herein. In the event any such unapproved plat is recorded it shall be considered invalid and proceedings shall be instituted to have the plat stricken from the County records by the City Planner through the City Attorney.
2. Sale of Land in Subdivision. No owner or agent of the owner of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, exhibition of, or by the use of a plan or plat of a subdivision before such plan or plat has been approved and recorded in the manner prescribed herein. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transactions from the provisions of these Subdivision Regulations.
3. Public Improvements. Council hereby defines its policy to be that the City shall withhold all public improvements of whatever nature, including the furnishing of sewage facilities and water service from all subdivisions created after the effective date of this Section which have not been accepted by the Planning Commission in the manner prescribed herein
4. Inclusion and Relationship to Other Ordinances
  - A. The Subdivision and Land Development Ordinance shall be interpreted to include any and all other provisions of the Fairmont City Code which are necessary for an understanding of this Ordinance and the attainment of its purposes. The City Council of the City of Fairmont, West Virginia intends that all Fairmont City Code provisions relating to subdivision and land development, and all orders, rules, and regulations established pursuant to these

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provisions, be read as part of a uniform system of Fairmont subdivision and land development regulation.

- B. All departments, officials and employees of the City of Fairmont that are vested with the duty or authority to issue permits, certificates or approvals, shall conform to the provisions of this Ordinance and shall issue no permit, certificate or approval for any use, structure or activity if the same would be in conflict with the provisions of this Ordinance, unless otherwise provided for by law. Any permit, certificate or approval issued in conflict with the provisions of this Ordinance shall be null and void and, in no event, shall act as a waiver of the standards and requirements of these regulations
5. Fees. The subdivider shall pay a filing fee for every final plat submitted to the Planning Commission for approval as follows:
    - A. Minor subdivisions: thirty dollars (\$30.00).
    - B. Major subdivisions: seventy dollars (\$70.00) plus two dollars (\$2.00) for each lot.
  6. Variance Procedure. Council may, only when recommended by the Planning Commission, and pursuant to [Section 7.2.7](#) authorize a variance from these Subdivision Regulations when, in its opinion, undue hardship may result from strict compliance. In granting any variance, Council shall prescribe only conditions that it deems necessary to or desirable for the public interest and that shall not have the effect of nullifying the intent and purpose of the Comprehensive Plans or these Regulations. In granting variances and modifications Council shall require such conditions as shall, in its opinion and judgment, secure substantially the objectives of the standards or regulations so varied or modified. No variances shall be granted unless Council finds:
    - A. That there are special circumstances or conditions affecting such property such that the strict application of provisions of these Regulations would deprive the applicant of the reasonable use of this land.
    - B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
    - C. That the granting of the variance shall not be detrimental to the public welfare or injurious to other property in the territory in which such property is located.
  7. Variance Application. The application for any variance shall be made in writing by the subdivider at the time when the final plat is denied by the Planning Commission. Such application for any variance shall state fully and clearly all facts relied upon by the petitioner as defined by [Section 7.2.6](#) and shall be supplemented with maps, plans or other additional data which may aid Council in the analysis of the proposed variance
  8. Enforcement, Guarantees and Penalty
    - A. The Planning Commission is vested with all the necessary authority to administer and enforce conditions attached to the final plat approved for a development project, including, but not limited to the authority to:
      - i. Order, in writing, the remedy for any noncompliance with the conditions;
      - ii. Bring legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
      - iii. Require a guarantee satisfactory to the Planning Commission in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Commission upon satisfactory evidence that construction of the improvements has been completed in whole or in part.
    - B. Failure to meet all conditions attached to the final plat approved for a development project shall constitute cause to deny the issuance of any of the required use, occupancy or improvement location permits, as may be appropriate.

- C. Any person who continues any violation beyond the time limit provided for in this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount up to \$500.00. Each day in which any such violation shall continue shall be deemed a separate offense.
- D. The Building Inspector, Deputy Building Inspector, Code Enforcement Office, other Code official, and any other municipal officer authored to investigate and enforce the provisions of law shall have authority to enforce the provisions of the Subdivision Regulations.

### 7.3 PROCEDURE FOR PLAT APPROVAL

1. Pre-application Review
  - A. Prior to the filing of an application for approval of a subdivision plat, a subdivider may submit to the secretary of the Planning Commission for transmittal to the City Planner the plans and data described in subsection (b) hereof for the purpose of a pre-application review by the Development Review Committee. This step shall not require a formal application fee or the official filing of such subdivision plan with the Planning Commission.
  - B. For a pre-application review, the subdivider shall furnish the City Planner the following plan and data:
    - i. A plan in simple sketch form showing the proposed subdivision
    - ii. A location map showing the relationship of the proposed subdivision to existing community facilities which serve or influence it and showing the following information: main traffic arteries, shopping facilities, schools, parks and playgrounds, churches, public transportation and railroad tracks. The location map shall include a title, north arrow, scale and date.
    - iii. Pre-Application form.
  - C. As soon thereafter as possible, the City Engineer and City Planner shall inform the subdivider that the plans and data do, or do not, meet the objectives of these Subdivision Regulations. In no event shall pre-application approval constitute conditional or final approval of a subdivision plat. When the DRC find that

plans and data submitted under this Section do not meet the objectives of these Regulations they shall express their reasons therefor.

2. Filing and Preliminary Review for Major Subdivisions. A person desiring the preliminary approval of a subdivision plat shall submit a written application for approval, together with a copy of the proposed plat to the secretary of the Planning Commission for transmittal to the Development Review Committee. The subdivider shall file with the application for approval the plans and supplementary material set forth in [Section 7.4](#).

Within fifteen (15) days after receipt of the application, the Commission through the Development Review Committee, (DRC), shall examine the application for compliance with technical requirements. When all technical requirements are met, or can be met by modification of the plan, forward the plat to the Planning Commission for review and approval. When such requirements are not met, the City Planner shall refer the plat back to the applicant for modifications stating in writing the deficiencies which must be met and resubmitted for review by the DRC. If the application is not actively pursued by the applicant within six months, the application shall be considered null and void.

3. Tentative Approval. Within thirty (30) days after the DRC has forwarded the plat to the Planning Commission, the Commission shall determine by vote at the next regular meeting, or a special meeting, affirming the DRC review for completeness based upon a finding that the application meets the requirements as set forth in these Regulations. If the application is determined to be complete, the Commission give tentative approval of the plat and shall set a date, time and place for a public hearing and a meeting to follow the public hearing to vote on the application. The public hearing shall be held within forty-five (45) days. The City Planner shall notify the applicant of the public hearing and meeting in writing (unless notice is waived in writing by the applicant) and notifying by publication in the manner specified in West Virginia Code 8A-5-8 any person or governmental unit having a probable interest in the proposed plat.



4. Final Plat Approval. After the hearing, and at the meeting or a meeting held within fourteen (14) days after the public hearing, and following a review by the Planning Commission of the application and the final plat of the proposed subdivisions and other material submitted for conformity to these Regulations, the Commission shall, approve or disapprove the application as submitted or modified, or hold the application. The application may be held for additional information necessary to make a final determination. An application may be held for up to forty-five (45) days.
  - A. If the Planning Commission approves the application, then the Commission shall affix its seal on the subdivision plat.
  - B. If the Commission approves the application with conditions, the Commission shall specify these conditions in writing.
  - C. If the Commission disapproves the application, it shall set forth its reasons in its own record and provide the applicant with a written copy thereof. The applicant may request, one time, a reconsideration of the decision of the Commission, which request for reconsideration must be in writing and received by the Commission no later than ten (10) days after the decision of the Planning Commission is received by the applicant.
5. Conditional Approval. The Planning Commission may approve a plat for the subdivision in which the improvements and installation are in compliance with [Section 7.6](#). In lieu of the completion of such improvements prior to consideration of a final plat, the subdivider may guarantee completion of required improvements on the land by the following method:
  - A. Post a bond executed by a surety company licensed to do business in the State and approved by the Commission guaranteeing the completion of the improvements in accordance with standards approved by the City Engineer as set forth in a contract between the developer and a bona-fide corporate contractor; such contract shall accompany the bond, and it shall include the bond as a part of the contract. Such surety and contract shall be subject to the condition that the improvements on the land shall be completed within two (2) years after the date of approval of the final plat and also to the condition that if such improvements are not fully completed in a manner acceptable to the City Engineer, the City shall proceed with the completion of the work and hold the owner and the surety jointly responsible for all of the costs thereof even though such costs may exceed the amount stipulated in the contract for doing the work.
  - B. The Commission may, if deemed advisable to the City Engineer, reduce the amount of the surety guaranteeing completion of required improvements on the land as such improvements are completed, providing however, that at no time shall surety remaining be less than that required to fully guarantee completion of all required improvements on the land.
  - C. A bond or certified check has been posted, or an escrow account has been created, which is available to the City, and in sufficient amount to assure such completion of all required improvements on the land.
  - D. A time for the completion of the improvements and installations shall be specified.
  - E. If an escrow account is created to guarantee completion of required improvements to a subdivision plat, the subdivider shall pay to the City a non-refundable escrow fee in the amount of \$500.00 which shall be a condition of approval.
6. Recording. The subdivider shall record the final plat, including all modifications and improvements required by the Planning Commission in the office of the Clerk of the County Commission of Marion County, West Virginia, within 365 days after the date of approval by the Commission; otherwise, the final plat shall be considered void.
7. Re-submittal. A subdivider, upon being notified that a final plat duly filed has been disapproved by the Planning Commission may, after making any additions or alterations required for compliance with the provisions of these Regulations, resubmit the final plat for reconsideration and approval to the Planning Commission.

## 8. Minor Subdivisions

A. Authority to Approve Minor Subdivisions. Minor subdivisions, as defined in [Section 2.2](#), shall be reviewed by the Planning Commission, acting through the City Planner, in accordance with the review procedures as stated in [Section 7.3.8.B](#).

### B. Minor Subdivision Review Procedures.

- i. The City Planner will provide information and advice concerning the review procedure during the pre-application review, ([see Section 7.3.1](#)), and coordination for the plat review and approval. Five (5) original, Final Plat maps, stamped and signed by a registered West Virginia Surveyor shall be prepared in conformance with the requirements specified in [Section 7.4](#) and submitted, along with the appropriate fees, to the City Planner. The City Planner will distribute the plat maps to the appropriate City agencies for review and comment.
- ii. Within seven (7) days after the submission of the minor subdivision plat, the applicant and the City Planner shall meet to discuss the proposed subdivision and the criteria used to classify the proposal as minor.
- iii. The City Planner may make a site inspection of the proposed subdivision.
- iv. Within ten (10) days after the submission of a complete subdivision plat application, the City Planner shall notify the applicant in writing that the proposed subdivision has been classified a minor subdivision.

### C. Approval of Minor Subdivisions.

- i. Within ten (10) days after a complete subdivision plat application has been classified a minor subdivision, the City Planner shall approve or deny the plat.
- ii. If the City Planner denies the plat, the City Planner shall notify the applicant in writing of the reasons for denial.
- iii. If the City Planner and other appropriate City agencies are satisfied

that the proposed subdivision is not contrary to applicable provisions of these Regulations or any other law or ordinance, the City Planner, after the approval and signature of any other applicable agency heads deemed necessary, will approve such subdivision and have the plat signed, dated, and affix the seal on the plat.

- iv. The City Planner may attach reasonable conditions and/or restrictions to the final plat. If the plat is approved with conditions, then the City Planner must state the conditions.
- v. The approved final plat shall be recorded in accordance with [Section 7.3.6](#) of these regulations.

### D. Review of Minor Subdivision Decisions.

- i. Within thirty (30) days after a decision or order of the City Planner on minor subdivisions, a subdivider may request review of the decision or order to the Planning Commission. The petition for review shall specify the grounds for the review and on a form as prescribed by the Commission.
- ii. Within thirty (30) days after a review is requested, the Planning Commission shall at their next regular meeting make a final determination on the application.
- iii. Notice of the meeting in which the review will be considered by the Commission will be given by regular mail to the subdivider.

9. Revisions to Approved Plats. The applicant shall submit proposed revisions to the approved Plat to the City Planner. Within ten (10) days after receiving a complete application, the City Planner shall initiate a review of the proposed revisions. For all revisions determined to be major revisions, Planning Commission approval shall be required.

A. Minor Revisions. If the City Planner deems the revisions to be minor in nature, the City Planner is authorized to approve the revisions to the plat with an affixed seal. The City Planner may direct any revised plat to the Planning Commission.

B. Major Revisions. For all revisions determined by the City Planner to be major revisions, Planning Commission approval shall be required. Procedures for considering a major revision to a plat shall be the same as required for an initial application for plat approval.





10. Vested Property Rights. Vested Property Rights under this Ordinance shall be addressed in the manner specified in West Va. Code 8A-5-12 as amended.
11. Appeal Process. Within thirty (30) days after a decision or order of the Planning Commission, any aggrieved person may present to the Circuit Court of Marion County a duly verified petition for a writ of certiorari setting forth:
  - A. That the decision or order of the Commission is illegal in whole or in part; and
  - B. Specifying the grounds of the alleged illegality.

#### 7.4 PLAT AND PLAN CONTENTS

1. Preliminary Plat Documents to be Submitted. The subdivider shall submit the following plans and supplementary material that are applicable to his plats as designated by the City Planner and Engineer with the application for approval of the preliminary plat.
    - A. Form. In all cases, the preliminary plat shall be clearly and legibly drawn and the size of the map shall be a minimum size of eight and one-half (8½) inches by fourteen (14) inches and a maximum size of twenty-four (24) inches by thirty-six (36) inches. Minimum scale acceptable is one (1) inch equals twenty (20) feet and maximum scale is one (1) inches equals fifty (50) feet.
    - B. Required Information. The subdivider shall submit three (3) copies of the preliminary plat showing the following information:
      - i. The nearest street, to which all dimensions, angles, bearings and similar data on the plat shall be referenced.
      - ii. Tract boundary lines, right-of-way lines of streets, easements, and other rights -of-way, and property lines of residential lots and other sites, with, in all cases, accurate dimensions and bearings, length of radius and length of arc.
      - iii. Streets on and adjacent to tract, including name and right-of-way with.
      - iv. Watercourses, marshes, houses and barns.
      - v. Proposed public improvements and proposed right-of-way or easement.
      - vi. Zoning districts.
      - vii. Lot lines and lot numbers, tax map, parcel, lot deed book and page, and name of adjoining parcel(s).
      - viii. Sites to be reserved or dedicated for parks, playgrounds or other public use.
      - ix. Accurate location of all monuments.
      - x. Title, north arrow, scale and date.
      - xi. Proposed name of subdivision and names of subdivider and engineer or licensed land surveyor.
- Exception: When the request before the Planning Commission involves a minor subdivision the City Planner may waive specific submission requirements as deemed not applicable to minor subdivisions.
- The following information shall be indicated either on the preliminary plat or on a separate document, except in the case of the minor subdivisions or boundary adjustments:
- xii. Utilities on or adjacent to the tract;
  - xiii. Location, size and invert elevation of sanitary, storm and combined sewers;
  - xiv. Location and size of water main;
  - xv. Location of gas lines, fire hydrants, catch basins, electric and telephone poles and street lights;
  - xvi. Underground electric and telephone conduits.
- C. Additional Information. At the discretion of the City Planner, Engineer and the Planning Commission, a preliminary plat will indicate the following information:
    - i. The direction and distance to, and size of nearest water mains and sewers and the invert elevation of such sewers if water mains and sewers are not on or adjacent to the tract.
    - ii. Conditions on adjacent land such as but not limited to the approximate direction and gradient of ground slope, railroads, power lines, towers and other nearby non-residential land uses or adverse influences and ownership information concerning the adjacent un-platted land.
    - iii. Profiles showing existing ground surface and proposed street grades, typical cross sections for the proposed grading, roadways and sidewalks and preliminary plan of proposed sanitary and storm water sewer with grade and size indicated.

2. Final Plat Documents to be Submitted. The subdivider shall submit the plans, data and material required in [Section 7.4.1](#) for preliminary review, except that the plan shall be clearly and legibly drawn and shall include such detail drawings as may be required by the Planning Department to supplement material submitted or when needed to document changes. Such supplementary material may include cross sections and profiles of streets showing grades approved by the City Engineer and based on the U.S.G.S. datum plane, protective covenants, and a soil engineering report, prepared by a recognized authority, when development is on or adjacent to a known or potentially hazardous area.

Five (5) copies of the plat, with original signature by professional engineer or licensed land surveyor shall be submitted to the Planning Department. Additional copies, mylar or reproducible of larger plats may be required by the Planning Department.

## 7.5 DESIGN AND PLANNING STANDARDS

### 1. Streets

- A. Conformity. The arrangement, location, extent, character, width and grade of all streets shall conform to the Comprehensive Plan and shall be considered in their relation to existing streets and to planned streets approved by the City, to topographical conditions to public safety and convenience and in their appropriate relation to the proposed uses of land to be served by such streets. Where such is not shown in the Comprehensive Plan the arrangement of streets in a subdivision shall:
  - i. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - ii. Conform to a plan for the neighborhood approved or adopted by the City to meet a particular situation where topographical or other conditions make continuance or conformance to existing street impracticable.

### B. Street Right-of-Way Width.

- i. Street right-of-way widths shall conform to the Comprehensive Plan and where not shown therein shall be not less than the following:
- ii. A hillside turnaround shall be a minimum of fifty-eight (58) feet in diameter and fifty (50) feet diameter paving at minimum.

7.5.1.B Street Right-of-Way Widths	
Street Type	Minimum Width of Right-of-Way in Feet
Arterial	80
Collector	60
Secondary Collector	50
Minor	40
Marginal Access	40

- C. Minor Streets. Minor streets shall be laid out so that their use by through traffic is discouraged.
- D. Half Streets. Half streets shall not be used, except where essential to the reasonable development of a subdivision in conformity with other requirements of these Subdivision Regulations and where the City finds it practicable to require the dedication of the other half when the adjoining property is subdivided. Whenever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.
- E. Dead-End Streets. Dead-end streets designed to be so permanently shall not be longer than 500 feet and shall be provided at the closed end with a turn-around having an outside roadway diameter of at least eighty (80) feet and a street property line diameter of at least 100 feet. Where deemed appropriate by the Planning Commission, a tee turnaround may be used in lieu of the circular turnaround. The tee right-of-way shall be at least thirty (30) feet wide at all points and shall be paved throughout for a width of at least twenty (20) feet. The minimum length of any leg of the tee shall be twenty (20) feet exclusive of the intersection.





- F. Improved streets shall extend to the boundary of the subdivision to provide access to adjoining property at intervals along the property boundary not to exceed 1,000 feet, unless one of the following conditions is found to exist:
- The extension is impractical because of topography, the dimensions of the property subdivided, or other natural features, including but not limited to, regulated woodlands and wetlands;
  - The extension will result in the creation of undesirable traffic patterns not customarily found in residential areas.
  - Subject to Planning Commission approval, this requirement may be met by extension of an unimproved right-of-way if the Commission finds that an unnecessary hardship will occur in following the strict enforcement of this Section and that the public health, safety and welfare will not be harmed.
- G. Minor streets shall be laid out so that their use by through traffic will be discouraged.
- H. The arrangement of streets shall make provision for the continuation of principal existing streets in adjoining or adjacent subdivisions, insofar as they may be of a width as great as that of the street so continued or projected. The center line of such streets shall continue with the center line of existing streets.
- I. There the plat submitted covers only a part of the subdivider's tract, a sketch of the proposed future street system as a part of an overall development plan of the unsubmitted part shall be considered in light of adjustments and connections with the street system of the part not submitted.
- J. Proposed streets shall be so arranged in relation to existing topography as to produce desirable lots and streets of reasonable gradient.
- K. The street layout plan shall be designed to provide safe and convenient traffic circulation within the subdivision and in relation to access streets. Traffic access to the subdivision shall be designed to prevent vehicular congestion or other impairment of traffic resulting from access to and from the site.
- L. The street layout plan shall provide more than one point of external access to the subdivision. A boulevard street entrance shall not be considered as providing multiple points of access. Multiple access points shall be as remote from one another as is feasible. The requirement for secondary access may be satisfied by access to an adjacent subdivision. Secondary access shall not be required under the following circumstances:
- When each lot in the subdivision is no farther than 800 feet in street length from the point of external access to the subdivision.
  - When the property has limited frontage along external arterials, or topographic conditions on the external arterials reduce sight line distances, so that a secondary access point cannot be established which will provide safe ingress and egress. In such cases, the City shall require access roads for emergency vehicles where feasible. Emergency access roads shall be of all-weather construction and designed to support vehicles of twenty-five (25) tons. To discourage nonemergency vehicles, emergency access roads shall be designated by signage as for emergency access only, shall be separated from other roadways by mountable curbs, and shall utilize entrance radii designed to permit emergency vehicles while discouraging nonemergency traffic.
  - When a stub street is provided to adjacent property at a location feasible and practical for the development of a future connecting street. Where feasible, the City shall require access roads for emergency vehicles for use until such time as the adjacent property is developed so as to provide secondary access. Emergency access roads shall be of all-weather construction and designed to support vehicles of twenty-five (25) tons. To discourage non-emergency vehicles, emergency access roads shall be designated by signage as for emergency access only, shall be separated from other roadways by mountable curbs, and shall utilize entrance radii designed to permit emergency vehicles while discouraging nonemergency traffic.

- iv. Street systems shall make use of stub streets from adjacent property.
  - M. Intersections. Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than sixty (60) degrees.
  - N. Street Jogs Prohibited. Street jogs with centerline offsets of less than 125 feet shall be avoided.
  - O. Reverse Curves. A tangent of at least 100 feet in length shall be introduced between reverse curves on arterial and collector streets.
  - P. Street Deflections. When connecting street lines deflect from each other at any one (1) point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than 150 feet for minor and collector streets, and of such greater radii as the City shall determine prior to granting conditional approval of the preliminary plat for special situations and in the case of arterial streets.
  - Q. Property Lines. Property lines at street intersections shall be the long chord of an arc subtended of a radius of twenty (20) feet or greater radius where the City may deem it necessary.
  - R. Reserve Strips. Reserve strips controlling access to streets shall be prohibited.
  - S. Tracts Larger Than Ordinary Building Lots. When a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the opening of future streets and logical further resubdivision.
  - T. Private Streets. Private streets shall not be approved nor shall public improvements be approved for any private street.
  - U. Railroad on or Abutting Subdivision. When a subdivision borders on or contains a railroad right-of-way or limited access highway, the City may require a street approximately parallel to and on one side or both sides of such right-of-way, at a distance suitable for appropriate use of the intervening land, as for park purposes in residential districts, or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
  - V. Arterial Street on or Abutting Subdivision. When a subdivision abuts on or contains an existing or proposed arterial street, the City may require marginal access streets, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
  - W. Street Names. No street names shall be used which shall duplicate or be confused with names of existing streets and street names shall be subject to the approval of the City.
2. Alleys
    - A. Residential Areas. Alleys shall be permitted in residential areas.
    - B. Commercial and Industrial Districts. Alleys shall be provided in commercial and industrial districts, except that the City may waive this particular requirement where other definite and assured provisions are made for service access, such as off-street loading, unloading and parking consistent with and adequate for the uses proposed.
    - C. Width. The width of an alley shall not be less than sixteen (16) feet.
    - D. Intersections. Property lines at alley intersections shall be the long chord of an arc subtended of a radius of twenty (20) feet or a greater radius where the City may deem it necessary.
    - E. Dead-End. Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turnaround facilities at the dead-end, as may be deemed necessary by the City. (Ord. 1510. Passed 12-14-10.)
  3. Sidewalks
    - A. Required. Sidewalks shall be provided on arterial streets, and on collector or minor streets serving apartments, commercial establishments and industrial concerns.
    - B. Width. Sidewalk shall have the following minimum widths:
      - i. Local streets: five (5) feet.
      - ii. Collector streets: six (6) feet.
      - iii. Hillside streets: curb to property lines, not less than four (4) feet.
      - iv. Commercially used or zoned land: twelve (12) feet;



- v. Multiple-residential zones: ten (10) feet.

#### 4. Easements

- A. For Utilities. Easements with a right-of-way width of at least twelve (12) feet shall be centered on rear lot lines and alongside lot lines whenever necessary.
- B. For Drainage. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a storm sewer easement or drainage right-of-way conforming substantially with the lines of such water course and further width or construction or both, as shall be adequate for the purpose.

#### 5. Blocks

- A. Dimensions. The length, width and shape of blocks shall be determined with due consideration and regard to:
  - i. Provision of adequate building sites suitable to the particular needs of the type of use contemplated.
  - ii. Limitations and opportunities of topography.
  - iii. Zoning requirements, if any, governing the sizes, dimensions and use of lots.
  - iv. Needs for convenient access, circulation, control and safety of street traffic.
- B. Crosswalks. Pedestrian crosswalks shall be required only when circulation cannot be suitable and practically obtained by other arrangements, or when deemed essential to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. (Ord. 1510. Passed 12-14-10.)

#### 6. Lots

- A. Dimensions. Lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location and for the type of development and use contemplated and in accord with any governing zoning ordinance.
  - i. Residential lots shall be not less than sixty (60) feet wide at the minimum setback line as identified in the Zoning Ordinance. No new lot shall contain less than 6,000 square feet.

- ii. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service, parking, facilities and sidewalks required by the type of use and development contemplated.

- iii. Corner lots for residential use shall have extra width to permit appropriate setbacks from an orientation to both streets.

- B. Lines. Side lot lines shall be substantially at right angles or radial to street lines.

- C. Double Frontage. Double frontage and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.

- D. Uninhabitable Lots. Lots subject to flooding or which are endangered by periodic or occasional inundation, or shall otherwise not produce satisfactory living conditions shall not be platted for residential occupancy, until conditions are reviewed by qualified engineering personnel and recommended to the Planning Commission.

- E. Lot Remnants. All remnants of lots below minimum size left over after subdivision of a larger tract shall be added to adjacent lots rather than allowed to remain as unusable parcels.

- F. Access. Any subdividing of land shall provide a public street frontage on every lot of at least forty (40) feet except as provided for in [Section 7.5.8.B.](#)

- 7. Public Sites Shown on General Plan. When a proposed park, playground, school or other public use shown on the Comprehensive Plan is located in whole or in part in a subdivision, the subdivider shall dedicate or reserve adequate space for such purpose in such area within the subdivision when Council following a recommendation by the Planning Commission finds the requirement to be reasonably necessary to the public health and welfare.

## 8. Standards of Design for Hillside Subdivisions

- A. **Purpose and Objectives.** The purpose of this Section is to provide regulation of subdivisions and minor land division in hillside areas in a manner that shall adapt the improvements and lot design to natural terrain features for the best possible development. The principal objectives are to preserve the natural characteristic of the hill areas by good design practices, including cluster development where practical, protect watersheds and natural watercourses, maintain open space, preserve trails, and encourage construction of the highest quality improvement commensurate with economic feasibility.
- B. **Lot Design.** Each lot shall have an area equal to or greater than that required by the Zoning Ordinance or as allowed or required under other applicable regulations, such lot area to be sufficient for the house, setbacks, yards, any necessary cuts or fills and drainage facilities. The size and shape shall be such that any necessary permits can be issued under normal review procedures based upon application of ordinance requirements and accepted design principles. Future street openings and street extensions for traffic circulation shall be provided. Lots typically shall have frontage on only one (1) street where practicable, but may have double frontage when necessary because of natural terrain features.

All lots shall be designed to provide the maximum in safety and human enjoyment while taking advantage of the best natural building sites. Trees of significant value and the natural contours of the land shall be preserved as much as possible.

Where lots have frontage on a roadway which is not designed to permit parking, off-street parking shall be provided. Either individual lot or common parking areas may be used. Common parking areas to serve several dwelling units shall be designed for three (3) spaces per dwelling unit, exclusive of garage or carport. If common parking areas are not used, each lot shall be improved to provide off-street parking spaces for four (4) cars in addition to parking provided within garages or carport. Driveways may be used to provide this parking.

Appendage type parcels, i.e. flag lots, corridor lots, etc. may be approved where this design provides the most practicable means of access to building sites. Up to ten (10) percent of the lot area may be composed of land in the appendage. The maximum length of the appendage shall be 300 feet. Appendages for single lots shall not be less than twenty (20) feet wide and have an all weather driveway surface of not less than twenty (20) feet. If the length is over 150 feet, turnouts shall be provided as required by the advisory agency. No more than two (2) adjacent appendages shall be allowed. The combined width of two (2) adjacent appendages shall be at least thirty (30) feet, with a paved driveway surface width of not less than twenty (20) feet. Reciprocal easements shall be provided. Lesser width and greater length appendages may be approved when sufficient evidence is presented to show that the above requirements are not practicable. In all cases, the building site exclusive of the appendage shall meet the requirements of this Section and other applicable regulations.

Lot widths have a significant effect on aesthetics and improvement costs. To avoid undesirable narrow, deep lots and improvement costs, lots widths, except cluster developments shall be equal to or greater than:

7.5.8.B Guide to Minimum Lot Widths	
Area in square feet	Lot Width in feet
20,000	75 to 100
40,000	100 to 150
60,000	150 to 200

- C. **Development in Hazardous Areas.** Development on or adjacent to known potentially hazardous areas shall be discouraged. Any proposed subdivision or minor land division known to be on the active trace or in the currently active zone or zones of faults or in the immediate vicinity or areas which have critically expansive soils or other soil conditions which if not corrected would lead to building structural defects or damage to





land improvements, may be allowed only after submission to and approval by the Planning Commission of a soil engineering report prepared by a recognized authority. Such report shall specify the remedial measures, if any are necessary, that shall make a safe development. Adequate guarantee shall be provided prior to recording of the final map or parcel map that such measures as are necessary shall be taken before construction of any buildings or acceptance of any improvements by the County.

- D. Street and Drainage Improvements. Streets shall be designed to take advantage of the natural contour of the land to provide the best possible access to building sites, reduce cuts and fills and establish desirable grades. Split level or one-way design shall be used where necessary and practical to achieve these objectives.
- E. Since road rights-of-way in hill areas shall provide adequate space for safe driveway approaches, pathways, utilities, and roadway cuts and fills, a forty (40) foot width will be required. Additional widths or slope easements shall be provided when necessary for the construction of split level roads. Rights-of-way of less than forty (40) feet may be approved when sufficient evidence is presented to show that this width is not practical.
- F. Cul-de-sacs normally shall not be designed to serve more than twenty-four (24) lots and the length shall not be more than 750 feet unless justified by topographic conditions to the satisfaction of the City Engineer and the Planning Commission. One-way loop streets shall be considered when justified by detailed engineering studies submitted by the subdivider. If one-way loop streets are used, emergency pullout areas shall be provided at approximately 500 foot intervals. The Planning Commission may require a second means of access where a dead-end road is more than 300 feet in length. Street and drainage improvements shall be as specified by the City Engineer and he is authorized to modify these standards as required by varying topographic conditions. Stage construction shall be deemed practical by the City Engineer.

- G. Landscaping of streets shall be encouraged where appropriate especially on unsightly cuts and fills. Erosion control plantings shall be provided where necessary to prevent serious erosion.
- H. Water Supply. Domestic water shall be provided as required for all lots approved for development.
- I. Fire Protection. Fire protection facilities and water supply for fire protection shall be provided to the satisfaction of the Fire Department to reduce the risk of fire loss or damage. All land division shall meet any additional standards for fire protection facilities and water supply for fire protection adopted by ordinance of Council.

## 7.6 REQUIRED IMPROVEMENTS

Prior to the granting of final approval of the final plat, the subdivider shall have installed or shall have furnished adequate bond for the ultimate installation of the following:

- 1. Monuments. Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points as shall be required by the City Engineer. The monuments shall be of such material, size and length as may be required by the City Engineer.
- 2. Streets.
  - A. Grading. All streets shall be uniformly graded to full right-of-way width and in accordance with lines and grades given conditional approval by the City. All watercourses crossed by a street or other open way shall be provided with permanent culverts of adequate size and of a type and size meeting City specifications.
  - B. Construction. All streets shall be fully constructed and surfaced in accordance with City specifications for the particular types of roadways and pavements in the subdivision; and such construction shall be subject to inspection and approval of the City Engineer.
  - C. Curbs and gutters. Curbs and gutters shall be constructed in accordance with City specifications and installed in all subdivisions. Such construction shall be subject to inspection and approval by the City Engineer.

- D. City specifications. Streets shall be improved with concrete curbs or concrete curb and gutter, storm sewers, and paved with either concrete or bituminous pavement on crushed limestone base as required by the schedule established by the City Engineer for this work.
  - E. Lighting. Provisions for street lighting shall be made at every intersection and in the middle of any block greater than 300 feet in length.
3. Sidewalks. Sidewalks where required shall be constructed in accordance with the West Virginia specifications for Highways and Bridge Section 609, adopted by reference.
  4. Water Supply. A water supply system with mains of ductile iron, at least eight (8) inches in diameter and having a sufficient number of outlets to furnish adequate domestic water supply for each lot of the subdivision and to provide adequate fire protection to meet local neighborhood needs shall be provided by the subdivider subject to statutory provisions governing such construction.
  5. Sanitary Sewer System. Where a public sanitary sewer is reasonably accessible, each lot within the subdivision shall be provided with a connection thereto which shall be extended to the main part of the building lot. All connections shall conform to the requirements of the Sanitary Board, City of Fairmont, and shall be subject to the approval of such Board. All sanitary sewer lines shall be a minimum of eight (8) inches in diameter.
    - A. Sewer planned. When the public sanitary sewer system is not reasonably accessible, but where plans for the installation of sanitary sewers in the vicinity of a subdivision have been prepared by the City Sanitary Board, the subdivider may be required to install sewers in conformity with such plans. In such cases, until a connection can be made with the public sewer system, the use of individual disposal devices shall be permitted, provided such disposal devices are approved by the Sanitary Sewer Board and are within the requirements of the State Department of Health.
    - B. Sewer not accessible. Where a public sanitary sewer system is not accessible and no plans for sewers have been prepared, the subdivider may be required to install sewer lines and a disposal system meeting all applicable state and local statutory requirements. Provided, that if the subdivision has been platted into lots of more than 10,000 square feet, the subdivider may install individual disposal devices for each lot at the time improvements are erected thereon. All such individual sewage disposal devices and systems shall be constructed in accordance with Sanitary Board and State Department of Health requirements.
    - C. No combination sewer. In no case shall connections be made with a sanitary sewer line within or without a subdivision for the disposal of surface or ground water, storm water or water from roof drains of any structure.
  6. Storm Sewer.
    - A. Public storm sewer accessible. When a public storm sewer is reasonably accessible, the subdivider shall provide a system of storm sewers, separate and apart from sanitary sewers, and of sufficient size and capacity and with an adequate number of catch basins to handle neighborhood need in the subdivision.
    - B. Public storm sewers not accessible. When a public storm sewer is not reasonably accessible, the subdivider shall provide a system of storm sewers, separate and apart from sanitary sewers, and of sufficient size and capacity and with an adequate number of catch basins to handle neighborhood need in the subdivision providing the City has plans for a public storm sewer connection within, or in the vicinity of, the subdivision, or when the City can provide a suitable watercourse or drainage way pending the availability of a storm sewer.





1 Purpose and Introduction

2 Definitions

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# *Article 8.0*

## *Administration and Enforcement*



<b>Article 8.0</b>	<b>Administration, Appeals and Enforcement</b>
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8.2	<a href="#">Restoring Unsafe Buildings</a>
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# 8.0 Administration, Appeals, and Enforcement

## 8.1 PENDING APPLICATION FOR BUILDING PERMIT

Nothing in this Ordinance shall require any change in the plans, construction, or designed use of any building or structure for which a building permit was secured prior to the adoption of this Ordinance, providing the building permit remains valid.

## 8.2 RESTORING UNSAFE BUILDINGS.

Nothing in this Zoning Ordinance shall prevent the strengthening or restoring to a safe condition of any part of a building or structure declared unsafe by the City.

## 8.3 NON-CONFORMITIES

1. Purpose and Applicability. The purpose of this Article is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Zoning Ordinance (or any amendment subsequent thereto) that do not conform to this Zoning Ordinance. Any non-conformity created by a change in the classification of property or the text of these rules and regulations shall be regulated by the provisions of this Article. Many non-conformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this Zoning Ordinance.
2. Non-Conforming Uses
  - A. Non-conforming uses of land or structures, and non-conforming structures that contain non-conforming uses, may continue only in accordance with the provisions of this Article, but this Article shall only apply to the extent said non-conformities fully and clearly meet the definition of “non-conforming use” in [Section 2.2](#).
  - B. Normal structural repair and maintenance may be performed to allow the continuation of a non-conforming use.
  - C. A non-conforming use may be enlarged or increased to occupy a greater area of a building than was occupied at the effective date of the adoption or amendment of this Ordinance after review and approval by the Board of Zoning Appeals upon reaching a determination that the proposed enlargement, increase, or greater area;

- i. Shall not have a substantial detrimental effect on the use and enjoyment of adjacent uses or lots;
- ii. Shall comply with all parking, sign, landscaping, or other applicable regulations to the area affected by the proposed enlargement, increase, or greater area as evidenced on an approved site plan;
- iii. No land beyond what was original to the use will be occupied or used by the non-conforming use. Where permissible, additional land may be added to the development but can only be constructed and used in accordance with the regulations of this Ordinance and shall not act to enlarge a non-conforming use, building, or structure.

- D. An existing non-conforming residential use located in a non-residential district may, however, be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the specific district.
- E. Upon authorization by the Board of Zoning Appeals, a non-conforming use may be changed to another equal or less intense non-conforming use.
- F. Once a non-conforming use has been changed or converted to a conforming use, it shall not thereafter be used for any non-conforming use.
- G. If a use of a property that does not conform to this Zoning Ordinance has ceased and the property has been vacant for one (1) year, abandonment will be presumed and the non-conforming use shall not be allowed to re-establish. If the property has been abandoned, then any future use of the land, buildings, or structures shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district wherein the property is located as provided in this Zoning Ordinance, unless the property is a duly designated historic landmark, historic site, or historic district.

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H. Abandonment of a non-conforming use shall be determined if one (1) or more of the following conditions exists, and shall be deemed to constitute intent on the part of the property owner to abandon the non-conforming use:

- i. Utilities, such as water, gas, and electricity to the property have been disconnected.
- ii. The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation.
- iii. The business license issued by the City of Fairmont has expired.

### 3. Non-conforming Buildings

- A. A non-conforming structure containing a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Article.
- B. Normal repair and maintenance may be performed to allow the continuation of non-conforming structures.
- C. A non-conforming structure may not, under any circumstances, be enlarged or altered in a way which increases its non-conformity except as noted below.
- D. Where the non-conforming setback of a building or structure exists, the non-conforming setback may be extended along the same building line as the existing non-conforming setback, provided that in so doing, the setback itself is not further reduced.
- E. If a non-conforming, non-residential structure is damaged due to fire or other disaster event, it may be rebuilt only upon the issuance of a permit by the Board of Zoning Appeals upon a finding by the Board of Zoning Appeals that the estimated cost of repairs does not exceed 100% of the assessed value of the building or structure as determined by the Marion County Assessor as of the July 1, preceding the date of the fire or other disaster, together with any improvements thereto which can be established by credible documentary evidence and which may have been made after said date. An application to the Board of Zoning Appeals for permission to undertake to re-construct the structure must be filed prior to undertaking the repairs after the use has

been destroyed or damaged, otherwise any structure shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district as provided in this Zoning Ordinance.

In addition to the finding, in the issuance of said permit, the Board of Zoning Appeals shall follow these standards:

- i. If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be.
- ii. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located, then it shall be placed on the lot in as conforming a manner as possible.
- iii. A nonconforming structure shall not be rebuilt in a manner, which increases its nonconformity.
- iv. The reconstruction of a non-conforming structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering.
- F. Should a nonconforming structure be moved for any distance on the lot upon which it is located, if possible, it shall be moved so as to make the structure conforming. Otherwise the structure, if moved shall be placed on the lot in as conforming a manner as possible.
- G. A non-conforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if:
  - i. The replacement is a manufactured home which bears a valid seal indicating conformance with the 1976 National Manufactured Housing Construction and Safety Standards Act, and
  - ii. The replacement manufactured home is newer in age than the one it is replacing. The replacement manufactured home must receive a Certificate of Occupancy within six (6) months of the removal of the original manufactured home. The manufactured home must meet all district requirements.

- H. Once a non-conforming structure has been removed or demolished, the redevelopment of the site must meet current Planning and Zoning Codes of the City of Fairmont.
- 4. Non-conforming Accessory Uses and Structures. No non-conforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.
- 5. Non-conforming Lots
  - A. Except as provided in b and c of this Section, a nonconforming vacant lot existing and of official record as of the effective date of this Ordinance may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all applicable yard and setback requirements for the zoning district in which the lot is located.
  - B. A non-conforming vacant lot shall not be developed if it could be combined with an adjoining lot (said lot being owned by the same person and any or all future assigns) on or after the effective date of these regulations in order to create a single lot. Where an owner owns adjoining property, construction may occur across the lot lines if that is the only way the yard requirements may be met without a variance. If said combination, however, results in the creation of a single lot that is more than one and one-half (1 ½) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as non-conforming. For the purposes of this Section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
  - C. Notwithstanding subsection (b) hereof, a non-conforming lot may be developed if, at the effective date of this Zoning Ordinance or any subsequent date upon which the lot became non-conforming,
    - i. The subdivision in which the lot was located had received preliminary plat approval; or
    - ii. The subdivision in which the lot was located had received final plat approval; or
    - iii. The lot was in a subdivision which constituted a vested right.
- 6. Non-conforming Parking, Landscaping and Screening
  - A. Expansions to the parking area or loading areas which increase the total area more than fifty (50) percent shall be required to comply with all applicable parking and loading area landscaping and screening.
  - B. Expansion of buildings by more than fifty percent (50%) of the original structure shall require all landscaping, lighting, and screening requirements to be met.
- 7. Non-Conforming Limited Video Lottery and Private Clubs. Limited video lottery and private clubs which are legal non-conforming uses as defined by this Ordinance may continue according to this Section but shall not be permitted to expand within the building it occupies.
- 8. Burden of Establishing Status. The burden of establishing legal, pre-existing non-conforming status rests on: the property owner or party seeking to continue the non-conforming use or occupancy; any person applying for a Building Permit or, any other person asserting such status. Such persons shall provide sufficient proof in a form acceptable to the Planning Director of the following:
  - A. The date of construction of the building or structure or the date the use was established;
  - B. The continuous operation of the nonconforming use; and,
  - C. Such other proof as may be deemed necessary by the Planning Director.





**8.4 ENFORCEMENT GENERALLY.**

1. The Building Inspector, Deputy Building Inspector, code enforcement officer, other code official, and any other municipal officer authored to investigate and enforce the provisions of law shall have authority to enforce the provisions of this Zoning Ordinance.
2. Subject to any and all right of appeal, whenever reasonable grounds exist to believe that a violation of the provisions of this Zoning Ordinance has occurred or exists, the investigating officer may forthwith summons, by issuance of a citation, the owner, tenant, occupant, and/or other persons or persons responsible to appear before the Judge of the Municipal Court for the City of Fairmont and to answer said charge on or before a date therein stated.
3. Each day a violation continues to exist or remains unabated shall be deemed a separate offense.

**8.5 VIOLATION DEEMED COMMON NUISANCE.**

The governing body hereby declares that any building erected, raised or converted, or land or premises used in violation of any provisions of this Zoning Ordinance or any rule, regulation or requirement adopted or established hereunder shall be a common nuisance and the owner, tenant, occupant, and/or other persons or persons responsible shall be liable for maintaining a common nuisance.

**8.6 INJUNCTION.**

1. The Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official may seek an injunction in the Circuit Court of Marion County, West Virginia, to restrain the owner, tenant, occupant, other persons or persons responsible, or unit of government from violating the provision of this Zoning Ordinance or any rule, regulation or requirement adopted or established hereunder.

2. The Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official may also seek a mandatory injunction in the Circuit Court of Marion County, West Virginia, directing the owner, tenant, occupant, other persons or persons responsible, or unit of government to remove a structure erected in violation of the provisions of this Zoning Ordinance or rule, regulation or requirement adopted or established hereunder.
3. If the Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official is successful in any suit brought under this Section, the respondent shall bear the costs of the action.

**8.7 PENALTY.**

Any owner, tenant, occupant, other person or persons responsible who violate any provision of this Zoning Ordinance is guilty of a misdemeanor and upon conviction, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

**8.8 CERTIFICATE OF USE AND OCCUPANCY.**

1. No person shall use or permit the use of any building or part thereof hereafter erected, created or changed or converted wholly or partly in its use or structure until the Building Inspector has issued a certificate of use and occupancy stating that the building and premises comply with the provisions of the Zoning Ordinance. Nothing in this Section shall prevent the continuance of the legal nonconforming use of any premises or of any existing building.
2. A record of all certificates of use and occupancy shall be kept on file on the Office of the Building Inspector and copies shall be furnished on written request.
3. No permit for the erection of any building shall be issued before application has been made for a certificate of use and occupancy. Such certificates shall be issued within ten (10) days after the completed erection or alteration has been approved. No building or premises may be occupied until the certificate has been issued.

4. All non-conforming uses under the provisions of this Ordinance, for which no variance has been granted by the City of Fairmont Board of Zoning Appeals, or for which application for a certificate of use and occupancy was not submitted prior to April 1, 1981 shall be presumed to have arisen subsequent to that date. For purposes of determining the number of boarders or roomers maintained in dwelling within any district the Building Inspector may require such proof as he deems necessary.

## 8.9 BOARD OF ZONING APPEALS

1. Board of Zoning Appeals Created. There is hereby created a board of zoning appeals to hear appeals on zoning issues to be known as the City of Fairmont Board of Zoning Appeals.
  2. Membership; Eligibility Requirements.
    - A. The City of Fairmont Board of Zoning Appeals shall have five (5) members to be appointed by the governing body.
    - B. The members of the City of Fairmont of Board of Zoning Appeals shall be:
      - i. Residents of the City of Fairmont for at least three (3) years preceding his or her appointment;
      - ii. Cannot be a member of the Planning Commission; and
      - iii. Cannot hold any other elective or appointive office in the City of Fairmont.
    - C. The members shall be appointed for the following terms: One (1) for a term of one (1) year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. The terms shall expire on the first day of January of the first, second and third years, respectively, following their appointment. Thereafter, members shall serve three (3) year terms. If a vacancy occurs, the governing body shall appoint a member for the unexpired term.
    - D. The governing body may appoint up to three (3) additional members to serve as alternate members of the City of Fairmont Board of Zoning Appeals. The alternate members must meet the same eligibility requirements as set out in [subsection 2](#) of this Section. The term for an alternate member is three (3) years. The governing body may appoint alternate members on a staggered term schedule.
  - E. An alternate member shall serve on the Board when one (1) of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.
  - F. The City of Fairmont Board of Zoning Appeals shall establish written rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of regular board member.
  - G. The members and alternate members of the City of Fairmont Board of Zoning Appeals shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
3. Meeting of the Board of Zoning Appeals.
    - A. The City of Fairmont Board of Zoning Appeals shall meet at least quarterly and may meet more frequently at the written request of the chairperson or by two (2) or more members.
    - B. Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two (2) days before the special meeting.
    - C. Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.
  4. Quorum. The City of Fairmont Board of Zoning Appeals must have a quorum to conduct a meeting. A majority of the members of the Board shall constitute a quorum. No action of the Board is official unless it is authorized by a majority of the members present at a regular or properly called special meeting.
  5. Officers. At its first regular meeting of each year, the City of Fairmont Board of Zoning Appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.
  6. Powers and Duties of the City of Fairmont Board of Zoning Appeals. The City of Fairmont Board of Zoning Appeals shall have the following powers and duties:



- A. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official charged with the enforcement this Zoning Ordinance or rule and regulation adopted pursuant thereto;
  - B. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations as specified in the Zoning Ordinance;
  - C. Hear and decide conditional uses of the Zoning Ordinance upon which the board is required to act under the Zoning Ordinance;
  - D. Authorize, upon appeal in specific cases only as provided in this ordinance, a variance to the Zoning Ordinance;
  - E. Reverse, affirm or modify the order, requirement, decision or determination appealed from so long as the action of the Board taken on appeal is consistent with the rules, regulations and requirements of this ordinance;
  - F. Authorize, upon appeal the substitution of one legal non-confirming use existing at the effective date of this Ordinance for another similar non-confirming use, provided however that no substitution shall be made in any General Residential district, however, in any other residential district no substitution shall be permitted to any use prohibited in a Neighborhood Mixed Use district or lesser restrictive district and in any Commercial district no substitution shall be permitted to any use prohibited in an Industrial district.  
Provided further that upon substitution all applicable Landscaping and Architectural Requirements of this Code shall be satisfied.
  - G. Promulgate and adopt written rules and regulations concerning:
    - i. The filing of appeals, including the process and forms for appeal;
    - ii. Application for variances and conditional uses;
    - iii. The giving of notice; and
    - iv. The conduct of hearings necessary to carry out the board's duties under the terms of this article.
  - H. Keep minutes of its proceedings;
  - I. Keep an accurate and complete audit record of all its proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four (24) hours of demand, for three (3) years;
  - J. Record the vote on all actions taken;
  - K. Take responsibility for the custody and preservation of all papers and documents of the Board. All minutes and record shall be filed in the office the of the Board and shall be public records;
  - L. With consent of the governing body, hire employees necessary to carry out the duties and responsibilities of the Board: provided, that the governing body sets the salaries; and
  - M. Supervise the fiscal affairs and responsibilities of the Board.
7. Variance.
- A. A variance is a deviation from the minimum standards of the rules, regulations and requirements of the Zoning Ordinance. A variance shall not include, involve or permit a land use that is otherwise prohibited in the zoning district nor shall it include, involve or permit the changing of the zoning classifications of a parcel of land.
  - B. The City of Fairmont Board of Zoning Appeals may grant a variance to the Zoning Ordinance if it finds that the variance:
    - i. Will not adversely affect the public health, safety or welfare or the rights of adjacent property owners, residents or the neighborhood;
    - ii. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
    - iii. Would eliminate an unnecessary hardship and permit a reasonable use of the land;
    - iv. Will allow the intent of the Zoning Ordinance to be observed and substantial justice done; and
    - v. Is the minimum variance that will accomplish this purpose



8. Appeal to Board of Zoning Appeals.

- A. An appeal from any order, requirement, decision or determination made by the administrative official charged with the enforcement of this Zoning Ordinance shall be filed with the City of Fairmont Board of Zoning Appeals.
- B. The appeals shall:
  - i. Specify the grounds for appeal;
  - ii. Be filed within thirty (30) days of the date of the original order, requirement, decision or determination made by the administrative official, which time period shall be jurisdictional in nature;
  - iii. Be on the form prescribed by the Board.
- C. Upon request of the City of Fairmont Board of Zoning Appeals, the administrative official shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

9. Notice and Hearing of Appeal.

- A. Within ten (10) days of receipt of the appeal by the City of Fairmont Board of Zoning Appeals, the Board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five (45) days of receipt of the appeal by the Board.
- B. At least fifteen (15) days prior to the date set for the hearing on the appeal, the Board shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.
- C. In addition to any other filing fee which may be required, prior to the hearing, the party taking the appeal shall reimburse the Board for the actual cost of public notice and written notice to interested parties.
- D. At the hearing, any party may appear in person, by agent, or by an attorney licensed to practice in this state.
- E. Every decision by the Board shall be in writing and state specific findings of fact and conclusions of law on which the Board based its decision. If the Board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to

the Board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the Board shall pay any additional costs for court filing fees, service of process and reasonable attorney's fees required to permit the person appealing the board's decision to return the matter to the circuit court for the completion of the appeal.

10. Stays; Exception. When an appeal has been filed with the City of Fairmont Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, unless the official from which the appeal was taken certifies in writing to the Board that a stay would cause imminent peril to life or property. If the written certification is filed, proceedings or work on the premises shall not be stayed. Nothing in this Section prevents obtaining an injunction.

11. Petition for Writ of Certiorari. The final decision of the City of Fairmont Board of Zoning Appeals shall be subject to review by the Circuit Court of Marion County, West Virginia, by certiorari, as provided by West Virginia Code §8A-9-1 et seq.

#### 8.10 AMENDMENTS

1. Amendments to the Zoning Ordinance by the Governing Body.
  - A. After the enactment of this Zoning Ordinance, the governing body may provide for the amendment of this Zoning Ordinance without holding an election.
  - B. Before amending the Zoning Ordinance, the governing body with the advice of the Planning Commission must determine whether the amendment is consistent with the adopted Comprehensive Plan. If the amendment is inconsistent with the Comprehensive Plan, then the governing body with the advice of the Planning Commission must find:
    - i. That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and
    - ii. That those changes have substantially altered the basic characteristics of the area.





2. Amendments to the Zoning Ordinance by Petition.
  - A. After the enactment of this Zoning Ordinance, the Planning Commission or the owners of fifty (50) percent or more of the real property in the area to which the petition relates may petition to amend the Zoning Ordinance. The petition must be signed and be presented to the City Planner for presentation to the Planning Commission or to the City Clerk.
  - B. Within sixty (60) days after a petition to amend the Zoning Ordinance is received by the City Planner for the Planning Commission or the City Clerk for the governing body, then the Planning Commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed Zoning Ordinance as a Class I legal advertisement, with the date of publication being at least fifteen (15) days prior to the public hearing.
  - C. If the petition to amend the Zoning Ordinance is from the owners of fifty (50) percent or more of the real property in the area, then before amending the Zoning Ordinance, the governing body with the advice of the Planning Commission, must determine whether the amendment is consistent with the adopted Comprehensive Plan. If the amendment is inconsistent with the Comprehensive Plan, then the governing body with the advice of the Planning Commission must find:
    - i. That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and
    - ii. That those changes have substantially altered the basic characteristics of the area.
3. Supplemental Notice to Adjoining Property Owners. Any person(s) firm or corporation presenting a petition for a change in this Zoning Ordinance shall, at the time of filing of the petition, provide the City Planner or the City Clerk with a list of the names and mailing addresses of the owners of all properties located within the same block as the property

to be rezoned or within a radius of 200 feet of all boundaries of the property to be rezoned. If the number of property owners is 100 or less, "Notice of Proposed Zoning Amendment " shall be served upon them by the petitioner by United States First Class Certified Mail, return receipt requested. If the number of property owners is greater than 100, notification of the petition shall be by publication of "Notice of Proposed Zoning Amendment" as a Class II legal advertisement, in an official newspaper in general circulation in the City of Fairmont, with the date of first publication being at least thirty (30) days prior to the scheduled public hearing. Said notice shall describe the nature and location of the proposed change(s) and shall specifically identify the parcels included by reference to the Marion County Tax Map and parcel numbers and shall include the date, time and place of the requisite public hearing. In addition, the City Planner shall conspicuously post, or cause to be posted, the aforementioned notice on two (2) properties within the area of the desired change.

4. Planning Commission Recommendation to Governing Body. Upon adjourning the public hearing, the Planning Commission shall make its recommendation and present its findings and report to the governing body within sixty (60) days. The Planning Commission's findings, recommendation and report shall include, at a minimum, a factual analysis and determination of the following:
  - A. The need and justification for the proposed amendment;
  - B. The effect of the proposed amendment on the property, the surrounding properties and the City as a whole;
  - C. The relationship of the proposed amendment to the Comprehensive Plan and to the general planning program of the City;
  - D. Whether there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted;
  - E. Whether those changes have substantially altered the basic characteristics of the area.;
  - F. Whether the proposed amendment should be adopted; and
  - G. Whether all notice requirements have been met.

The recommendation and report shall be advisory only, and shall not be binding on the governing body. If the Planning Commission does not submit its recommendation and report within sixty (60) days of the public hearing, the governing body shall proceed to act on the petition in prescribed time without further awaiting the recommendations of the Planning Commission.

5. Consideration by the Governing Body. Upon completing the first reading of any ordinance proposing an amendment to this Ordinance, the governing body shall set a public hearing to be held within thirty-one (31) days of the first reading. After holding the public hearing, the governing body shall render a decision within thirty-one (31) days of the public hearing.
6. Reconsideration of Proposed Amendment. Neither the governing body nor the Planning Commission shall consider or reconsider a petition presenting the same amendment to this Ordinance within a period of one (1) year from the date of the final determination on the initial petition; provided however, the Planning Commission may recommend to the governing body that a proposal be reconsidered within a period of less than one (1) year upon finding:
  - A. That there have been major changes of an economic, physical or social nature within the area since the initial consideration; and
  - B. That those changes have substantially altered the basic characteristics of the area; and
  - C. That the conditions were not considered by the Planning Commission or the governing body in previous deliberations.





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